CITY COUNCIL STAFF REPORT

MEETING DATE: November 19, 2003

Agenda Item #20

Prepared By:

Community Development Director

Submitted By:

City Manager

UPDATE OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (MEASURE P)

RECOMMENDED ACTION(S):

1. Review Proposed Amendments
2. Accept Public Testimony
3. Adopt Resolution Calling for a Special Municipal Election on the March 2, 2004 Ballot
4. Adopt Resolution Requesting County Consolidation of Elections
5. Adopt Resolution Setting Priorities for Written Arguments and Directing the City Attorney to Prepare an Impartial Analysis

EXECUTIVE SUMMARY: This item was considered by the City Council at its meetings of October 1st and November 5th and continued to this date. The item consists of placing before the voters an update and extension of Measure P to the year 2020.

At the November 5th meeting, discussion focused on the types of appeals which should be heard by the Council. Direction was given that the Council should hear appeals of project scoring and that the award of allotments should be solely the responsibility of the Planning Commission. In addition, testimony was received regarding a provision in the amendments which would extend to the year 2020 a density limitation on the property located at the northeast corner of the intersection of Barrett Ave. and Hill Road (the Arcadia property). The Council approved the Negative Declaration for the ordinance at the meeting. The Council then continued discussion of the ordinance and related resolutions to this date to allow the attorney representing the Arcadia Development Co. to present reasons why the density limitation should be removed from the ordinance and to allow staff to incorporate revised language regarding appeals. Staff received a letter from Mr. Barton Hechtman, the attorney representing Arcadia, which provides the legal basis for requesting amendment of the ordinance to eliminate the density limitation affecting the Arcadia property. In that letter, attached as Attachment 2, Mr. Hechtman suggests that the provisions regarding density limitations are inappropriate in that they represent "spot zoning" and violate equal protection laws.

Attached to the resolution calling for a special municipal election is the final version of the ordinance to be put before the voters. Sections 18.78.125 and 130 have been modified to include the appeals procedure specified by the Council. In addition, the dates relating to the preservation of open space have been updated to be consistent with the adoption date of the ordinance. Should the Council wish to modify the ordinance provision which addresses the density limitation on properties added to the Urban Service Area between March 1, 1990 and the effective date of Measure P, two alternatives have been provided. These alternatives are shown in Attachment 1, in addition to the language in the final ordinance. Alternative A (the language contained in the ordinance) is the alternative recommended by the Measure P Update Committee. It extends the density limitation provision to the year 2020. Alternative B eliminates the provisions regarding density limitation, thereby allowing any properties affected by the Measure P density limitation to compete for allocations upon passage of the initiative. Alternative C extends the density limitation provisions to July 1, 2010, consistent with the expiration date of Measure P.

The language in the resolutions calling for the special election and setting priorities for written arguments has been modified to reflect the direction of the Council regarding downtown development and the population growth rate.

FISCAL IMPACT: $65,000 has been budgeted for this project. No budget adjustment is required.

ORDINANCE NO._____

AN ORDINANCE OF THE CITY OF MORGAN HILL EXTENDING THE CITY'S RESIDENTIAL DEVELOPMENT CONTROL SYSTEM THROUGH THE YEAR 2020, AND AMENDING PROVISIONS OF THE GENERAL PLAN AND ARTICLE I OF CHAPTER 18.78 OF THE MUNICIPAL CODE TO UPDATE AND EXTEND THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM

The people of the City of Morgan Hill do ordain as follows:

Initiative Measure Section 1: Findings and Purposes

In approving this initiative measure the voters of the City of Morgan Hill make the following findings:

A. Since 1977 the City of Morgan Hill ("the City") has had in place a Residential Development Control System ("RDCS"), which sets a target future population for the City and provides a method for evaluating proposed residential developments and issuing a limited number of development allotments each year. The RDCS has helped to assure that residential development pays for itself and that the rate of development does not outstrip the availability of public services and infrastructure to serve the City's residents. The system was first enacted by the voters through Measure E in 1977, and subsequently refined and extended through Measure P in 1990. By its terms Measure P shall remain in effect until fiscal year 2009/10, and can be amended only by a vote of the people. By this RDCS Update, the voters of the City are extending and updating Measure P.

B. Under Measure P, the RDCS has fostered balanced growth in the City. The City has achieved a manageable level of development, and has encouraged more efficient patterns of development by directing growth to areas that are contiguous to existing development and served by adequate infrastructure. The RDCS has helped the City to preserve a diversity of housing opportunities, including a good stock of high-quality affordable housing, for its residents. It has helped to maintain the vitality of the City while preserving its open space resources. Accordingly, the people by this initiative measure are extending, through fiscal year 2019/20, the core provisions of the City's General Plan and zoning ordinances relating to the RDCS.

C. Measure P established a population ceiling of 38,800 for the City in the year 2010. The City's current population is approximately 35,000. In 2001, the City updated its General Plan and incorporated in it an updated population projection of 48,000 for the year 2020. This RDCS Update will incorporate the updated 2020 population projection and adjust the allotment provisions of the RDCS accordingly.

D. The Leroy F. Greene School Facilities Act of 1998 provides for the exclusive means of considering and mitigating impacts of development projects on school facilities and

limits the ability of a city to deny approval of a project on the basis that school facilities are inadequate. Conforming amendments to the RDCS are therefore appropriate.

E. In reviewing the implementation of the numerical formulas and the scoring system of the RDCS, the City has concluded that, while on the whole the system works well and should be maintained and extended, certain aspects of the RDCS need to be further refined to provide a more consistent number of allotments each year and avoid extreme variations in the amount of residential development that takes place year to year, and otherwise to simplify the administration of the system.

F. Measure P's requirement that one-third of all residential development allotments be awarded to projects on the west side of Monterey Road and one-third on the east side of Monterey Road, with the remaining third anywhere in the City, has resulted in undesirable effects including projects on the west side of Monterey Road being approved with lower point scores than projects on the east side. This RDCS Update would eliminate the required geographical distribution and instead adopt provisions encouraging new residential development in the downtown and near the central portion of the City.

G. The City adopted a new Downtown Plan in 2003. A major strategy of the Downtown Plan is to encourage an increase in the number of residential units in the downtown area, in order to strengthen the base of support for existing businesses, to provide market support for new businesses, and to establish a viable neighborhood in this central area of the City. This RDCS Update will require the reservation of a certain number of allotments for projects in the downtown area through 2010. Reserving allotments for residential projects in the area covered by the Downtown Plan will help to ensure that this strategy is successfully implemented.

H. Should the City in the future establish an Urban Limit Line or Greenbelt, no residential development or expansion of the Urban Growth Boundary or Urban Service Area could be approved pursuant to this RDCS Update that is inconsistent with such Urban Limit Line or Greenbelt.

I. Based on the foregoing, the voters hereby enact the provisions set forth in sections 2, 3, and 4 below, amending the General Plan and Chapter 18.78 of the Morgan Hill Municipal Code, and extending the terms of Measure P, as amended, through fiscal year 2019/20.

J. Attached to this initiative measure as Exhibit A is a map based on the Morgan Hill General Plan Land Use Diagram. On Exhibit A, the lands within the City designated as Open Space and retained as open space pursuant to Measure P and this initiative are highlighted, and the Urban Service Area referred to in this initiative is also illustrated. The map is for reference purposes and is not being adopted or amended by this initiative measure.

Initiative Measure Section 2: General Plan Amendment

The City of Morgan Hill General Plan Community Development element contains the core provisions governing "Residential Development Control," as adopted by the voters of the City when they passed Measure P in November 1990. The people now wish to update and extend the provisions of the General Plan enacted by them in Measure P, and accordingly adopt the General Plan amendments set forth below. Changes to the text approved by the voters in 1990 are shown by strike-out text for deletions, and underscored text for additions. The "Residential Development Control" provisions appear at pages 25-28 of the July 2001 Morgan Hill General Plan. The provisions of the General Plan as amended by this initiative shall remain in effect through fiscal year 2019/20.

Residential Development Control

The following provisions, enacted by voter initiative Measure P in 1990 and refined and extended by vote of the people of the City in 2004, shall apply to all residential development in the City, and to any residential development that requires provision of urban services by the City, to and including fiscal year ~~2009/2010~~ 2019/20.

A. Requirement of Development Allotments for All Residential Development.

For the years to and including fiscal year 2019/20 ~~2009/2010~~, no residential development shall be undertaken, and no discretionary permit or building permit shall be issued, in the City of Morgan Hill unless a development allotment has been obtained therefor in accordance with the provisions of this section of the General Plan and the Residential Development Control System (RDCS) set out in the Morgan Hill Municipal Code, except ~~one-dwelling unit developments which are not part of a current, planned or potentially larger subdivision, and except~~ for secondary dwelling units ("granny units") and for a single dwelling unit, on the following conditions: If one unit is proposed on a parcel of sufficient size to accommodate additional units, it may be permitted without an allotment only if a deed restriction is placed upon the parcel which requires allotments to be obtained for any additional dwelling units on that parcel. Furthermore, if more than one contiguous parcel is proposed for development by the same individual or entity under the single dwelling unit exemption on each parcel, Residential Planned Development Zoning shall be required for such development.

The Residential Development Control provisions of this section shall apply to all types of residential development in the City of Morgan Hill, including single family (which includes mobile homes) and multi-family housing.

B. Number of Development Allotments.

The population ceiling for the City as of January 1, 2020 ~~2010~~ is forty-eight thousand (48,000) ~~38,800~~. This ceiling shall not be increased, regardless of whether additional lands are added to the City or its Urban Service Area. ~~The increased burden on City services imposed by development outside the present City limits adversely affects the City's ability to provide services to developments within the present City limits.~~ However, if any of the following

existing County subdivisions, which are already within the City's Urban Growth Boundary ("Existing County Subdivisions"), are annexed into the City, the population within them shall not count against the 48,000 person population limit: Holiday Lake Estates Unit 1, Casalegno's Subdivision (Casa Lane), and El Dorado III (at the southwest corner of Hill Rd. and Diana Ave.).

The number of allotments shall be determined biennially, using the California Department of Finance's most recently determined figures for the persons per household and total population of the City of Morgan Hill. The State's estimate will be adjusted for any relevant housing backlog not included in its population estimate, any Existing County Subdivision (as defined under the prior paragraph) that has been annexed, and any other quantifiable factor which improves the accuracy of the estimate. The adjusted population is then subtracted from 48,000, the result divided by the Department of Finance's most recently determined figure for persons per household in Morgan Hill, and then divided by the number of years remaining between the population estimate date and 2020. This gross annual allotment is then reduced for any fiscal year by its previously awarded allotments (awarded in prior years) and the number of exempt units anticipated for that fiscal year. ~~The number of residential development allotments for any fiscal year shall be limited to a number equal to the desired annual population increase for that fiscal year divided by the occupancy level per dwelling unit. For purposes of this determination, the annual desired population increase shall be equal to the difference between 38,800 and the population of the City of Morgan Hill on January 1st of the previous fiscal year, divided by the number of years remaining between the previous fiscal year and fiscal year 2009/2010. The population of the City of Morgan Hill on January 1st of the previous fiscal year shall be equal to the most recent population determination by the California State Department of Finance. The occupancy level per dwelling unit, for purposes of calculation of annual allocations, shall be determined by the State of California, Department of Finance estimate for the City of Morgan Hill.~~

The number of development allotments shall be divided between conventional single family dwellings, mobile homes and multiple family dwellings in a manner determined ~~each year~~ by the City Council, provided that no less than thirty-three percent of all allotments shall be awarded to single family dwelling units. The number of affordable/elderly dwelling units shall be assigned in a manner consistent with state law for the total number of allotments to be assigned for that year. ~~No less than one-third of the total annual allotments shall be awarded to developments to the east of Monterey Road and no less than one-third of the total annual allotments shall be awarded to developments to the west of Monterey Road, with the remainder distributed on the basis of points received and without regard to the east/west distribution.~~ The City Council may, if it chooses, further divide the allotments according to geography, price, development size, phasing (including the number of units and timing of allotments required to complete a project), and similar criteria as deemed necessary to provide for the general welfare.

For the competitions for allotments in fiscal years 2006-07 through 2009-10, the City Council shall reserve a certain number of allotments for projects in the Downtown Area. The number of allotments allocated, and the geographic limits of the Downtown Area for this purpose, shall be determined by the Council. The Council may amend the number of the reserved allotments and geographic limits of Downtown for this purpose, and may continue to

reserve an appropriate number of allotments to Downtown area projects after the 2009-10 fiscal year.

The City Council may, in any year, reserve an appropriate number of allotments per year to vertical mixed-use projects, which are not restricted to the Downtown Area.

C. Development Allotment Applications and Evaluations.

~~The annual d~~Development allotments shall be allocated to proposed developments in accordance with a Residential Development Control System set out in the Morgan Hill Municipal Code. This system shall provide for awards of development allotments based on the number of points scored for all development proposals in an annual or biennial competition. ~~for each year.~~ The point scale used shall take into account the impact of the proposed development on the following public facilities and services: ~~schools,~~ water supply system, sanitary sewer and treatment plant, drainage and runoff, fire and police protection, traffic and other municipal services.

Proposed developments shall be awarded points for provision of schools and related facilities, open space, orderly and contiguous development, public facilities, parks and trails, low-income and moderate-income housing and housing for the elderly, and diversity of housing types; and for quality of architectural design and site design.

Small residential developments provide special benefits to the City by encouraging local developers, providing design variety, and promoting utilization of smaller lots. These developments do not impose as high a burden on municipal services as do larger projects, because their demands are incremental and they tend to be in fill developments. Such small developments may be unable to compete with larger developments in terms of the levels of amenities provided. In order to treat small developments in a manner reflecting their benefits to the community, the Residential Development Control System shall be designed to provide for small development through appropriate means selected by the City Council, such as a separate small project competition and a more streamlined and less costly process.

In implementing the provisions of the Residential Development Control System and making awards of development ~~allocations~~ allotments, the City Council shall comply with Government Code Sections 66000 et seq. and other relevant provisions of the state Planning and Zoning Law.

D. Emergency situations.

No residential development shall be permitted during a period of emergency or severe impaction of public facilities, as declared by the City Council pursuant to provisions of the Municipal Code. The declaration of an emergency or severe impaction situation may be based on determinations of ~~emergency overcrowding of the schools,~~ mandatory water rationing, sewage system operating at 95 % capacity, or other endangerment to the public health, safety or welfare. In the event of overcrowding in any public school serving Morgan Hill, the City Council shall work with the school district pursuant to Government Code sections 65970 et seq.

to seek appropriate mitigation and prevent further overcrowding, including, as authorized by state statute, prohibiting residential development within the overcrowded school attendance area. The Council shall, in implementing this provision, comply with the provisions of Government Code Sections 65858, 65996, and any other applicable provisions of law.

E. Open Space Conversions.

No development ~~allocations~~ allotments shall be awarded for a development proposal pursuant to this chapter and the RDCS unless the public benefits included in the proposal are secured in a permanent and enforceable manner. Lands that are designated for private or public open space, greenbelts, parks, paths, trails, or similar scenic and recreational uses in a residential development allotment application under this section shall, once the application is approved, be limited to the uses specified in the application, through the use of permanent dedications, easements or similar devices.

With respect to development ~~allocations~~ allotments already awarded, wherever legally possible, no further building permits shall be granted for a project until such public benefits specified in the development application, particularly but not exclusively open space dedications, have been secured in a permanent and enforceable manner.

The lands within the City of Morgan Hill that are designated "Open Space" on the Morgan Hill General Plan Land Use/Circulation Elements map, as amended through ~~March 1, 1999~~November 19, 2003 are hereby reaffirmed and readopted through ~~FY 2009/10~~ fiscal year 2019/20. This provision shall not prevent the City Council from designating additional lands as open space.

F. Urban Service Area Restrictions.

The City of Morgan Hill shall neither apply to LAFCO for, nor otherwise request or support, the addition of any land to its Urban Service Area, until such time as the City Council finds that the amount of undeveloped, residentially developable land ~~either to the east of Monterey Road or to the west of Monterey Road with~~in the existing Urban Service Area is insufficient to accommodate five years' worth of residential growth beyond that required to accommodate the number of development allotments available in the next competition. ~~for the land on that side of Monterey Road.~~ The projected rate of growth for purposes of this determination shall be the rate of growth provided for by this section of the General Plan and the RDCS. After making such a finding of space insufficiency, the City may support the addition of land to the Urban Service Area ~~of land only on the side of Monterey Road having the insufficiency, and~~ only to the extent necessary to support approximately five or fewer years of growth beyond that required to accommodate the number of development allotments available in the next competition ~~on that side of Monterey Road~~.

The City Council may formulate standards by which it may make exceptions to the above-stated provision, for desirable in-fill. Desirable in-fill is defined as a tract of land not exceeding twenty acres and abutted on at least two sides by the City or abutted on one side by the City and having two other sides within a quarter mile of a City boundary, (as determined by a

perpendicular line drawn from the side of the parcel to the City boundary), and whose inclusion into the Urban Service Area would not unduly burden City services and would beneficially affect the general welfare of the citizens of the City. The standards set up for granting such exceptions must include criteria to prevent repetitively granting exceptions to the same applicant, development or parcel. The City Council, prior to approving any expansion of the Urban Service Area for desirable in-fill, shall make findings documenting that the expansion would not unduly burden City services, and that the expansion would beneficially affect the general welfare of the City, as defined in the following paragraph.

Areas whose addition to the Urban Service Area would be considered to beneficially affect the general welfare of the citizens of the City include those areas that promote orderly and contiguous development by facilitating the provision of infrastructure improvements, or allow for the establishment of public facilities such as parks, schools, or other buildings to be owned or operated by the city, school district, water district, or any other public agency. Infrastructure improvements that would promote orderly and contiguous development are those that connect to the existing infrastructure (for example, the continuation of a dead-end street that would improve traffic circulation patterns), or otherwise complete or complement the existing system. The infrastructure improvements that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be installed, or the land needed for public facilities that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be conveyed to the public agency, within five years of the date that the area is added to the Urban Service Area or upon its development, whichever occurs first. The commitment by the applicant to install the needed infrastructure improvements on which the City's findings are based, and/or convey the land needed for the public facilities, must be secured prior to official action adding the area to the Urban Service Area, through a development agreement or other legally binding agreement recorded against the property. The City shall not require an applicant to provide infrastructure or land in a quantity exceeding that which is needed to fully offset and mitigate all direct and cumulative impacts on services and infrastructure from new development proposed by the applicant.

The City Council may make exceptions to these requirements for, and support the annexation to the City of, Existing County Subdivisions as defined in paragraph B, "Number of Development Allotments," of the Residential Development Control provisions of the General Plan.

This section is not intended to, and shall not be applied to, restrict or constrain the discretion of the LAFCO, nor to prevent any action required by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 or other state statute or by any Court judgment.

~~Because of the shortage of services and resources facing the City of Morgan Hill (e.g., water, sewer, schools, streets, fire and police protection), and in~~ In order to assure that ~~such~~ City services and resources are not unduly burdened, ~~further,~~ urban sprawl and noncontiguous development must be discouraged. Therefore, for any land added to the Urban Service Area between March 1, 1990, and the effective date of Measure P, December 8, 1990, ~~this initiative~~ and not considered "infill" as defined above, the City shall not provide urban services to support

any development at a higher density than that ~~is~~ provided for in the Santa Clara County General Plan as of March 1, 1990.

G. Urban Services Extensions.

The City of Morgan Hill shall grant no new extensions of urban services for residences beyond its Urban Service Area except in the event that: 1) Morgan Hill has entered into a mutual aid or reciprocal emergency agreement for police, fire or other emergency services to be provided by City facilities on County Land; or 2) an owner of an existing development requests an extension due to the failure of an existing septic system or well and the City Council makes a finding that denial of services to that development would have a direct adverse impact on the public health and safety.

Initiative Measure Section 3:
Amendments to Chapter 18.78 of the Morgan Hill Municipal Code

The Residential Development Control System (RCDS) is codified at Chapter 18.78 of the Municipal Code. Article I of Chapter 18.78 contains the core provisions governing the RCDS as adopted by the voters of the City of Morgan Hill when they passed Measure P in November 1990. The people of Morgan Hill now wish to update and extend the provisions of Article I of Chapter 18.78, Parts 2, 3 and 4, and accordingly adopt the Code amendments set forth below.

Rather than revise the original findings supporting adoption of Measure P in 1990 and set forth in Part 1 of Article I of Chapter 18.78, the people have made additional and updated findings, which are set forth in Section 1 of the 2004 ballot measure refining and extending the RDCS.

Changes from the text of the Morgan Hill Municipal Code are shown in the following sections amending Article I, Parts 2, 3, and 4, by strike-out text for deletions, and double-underscored text for additions. These provisions of Chapter 18.78 as amended shall remain in effect through fiscal year 2019/20.

Article I

Part 2. Residential Development Control

18.78.020 Development allotments--Required when.

For the years to and including fiscal year ~~2009/2010~~ 2019/20, no residential development shall be undertaken, and no discretionary permit or building permit shall be issued, in the city unless a development allotment has been obtained therefor in accordance with the provisions of the general plan and the residential development control system (RDCS) set out in Parts 2 and 3 of this article, ~~except one-dwelling unit developments which are not part of a current, planned or potentially larger subdivision, and~~ except secondary dwelling units ("granny units")~~.~~ and one-

dwelling-unit developments as provided for below. One-dwelling-unit developments may be permitted without a development allotment, providing the following requirements are met:

A. If the parcel upon which the one-unit-development is proposed is of sufficient size to accommodate additional units, a deed restriction shall be placed on the parcel which requires allotments to be obtained for any additional unit on the parcel.

B. If more than one contiguous parcel is proposed for development by the same individual or entity, or entities with an identity of interest, under the single dwelling unit exemption on each parcel, Residential Planned Development zoning shall be required for such development.

The residential development control provisions of Part 2 of this article shall apply to all types of residential development in the city, including single-family (which includes mobile homes) and multifamily housing.

18.78.030 Development allotments--Determination and distribution.

A. The population ceiling for the city as of January 1, 2020~~2010~~, is forty-eight thousand persons ~~thirty-eight thousand eight hundred~~. This ceiling shall not be increased, regardless of whether additional lands are annexed to the City or its urban service area. ~~The increased burden on city services imposed by development outside the present city limits adversely affects the city's ability to provide services to developments within the present city limits.~~

If any of the following existing County subdivisions ("Existing County Subdivisions") are annexed into the City, the population within them shall not count against the 48,000 person limit, as set forth below in section 18.78.030B: Holiday Lake Estates Unit 1, Casalegno's Subdivision (Casa Lane), and El Dorado III. The population of these Existing County Subdivisions shall be determined by multiplying the number of homes in each area by the average number of persons per household as determined by the most recent State Department of Finance estimates. Prior to the enactment of Measure P, Holiday Lake Estates Unit 1 and Casalegno's Subdivision (Casa Lane) were provided with City water service. The El Dorado III subdivision, at the southwest corner of Hill Road and Diana Ave., was developed in the County, and provided with sewer and water service, in order to eliminate a significant County health problem. These Existing County Subdivisions are all within Morgan Hill's UGB and were at least 95 percent developed as of November 19, 2003.

B. The number of allotments shall be determined biennially using the California Department of Finance's most recently determined persons per household figures and population for the City of Morgan Hill.

The California Department of Finance's population estimate will be adjusted for any relevant housing backlog not included in its population estimate, the population of any Existing County Subdivision enumerated in paragraph 18.78.030A that has been annexed, and any other quantifiable factor which improves the accuracy of the estimate. The adjusted population is then subtracted from 48,000, the result divided by the Department of Finance's most recently

determined figure for persons per household in Morgan Hill, and then divided by the number of years remaining between that population estimate date and 2020. This gross annual allotment number is then reduced for any fiscal year by its previously awarded allotments (awarded in prior years) and the number of exempt units anticipated for that fiscal year.

The biennial allotment calculation applies to each fiscal year after the fiscal year in which it is computed. For example, the Spring 2004 computation will be used to set the number of allotments for the competition to be held for fiscal years 2006/07 and 2007-08, as well as to make any positive supplemental adjustments for the previously awarded fiscal years 2004/05 and 2005/06, for projects that competed for 2004/05 and 2005/06 allotments.

~~The number of residential development allotments for any fiscal year shall be limited to a number equal to the desired annual population increase for that fiscal year divided by the occupancy level per dwelling unit. For purposes of this determination, the annual desired population increase shall be equal to the difference between twenty-eight thousand eight hundred and the population of the city on January 1st of the previous fiscal year, divided by the number of years remaining between the previous fiscal year and fiscal year 2009/2010. The population of the city on January 1st of the previous fiscal year shall be equal to the most recent population determination by the California State Department of Finance. The occupancy level per dwelling unit, for purposes of calculation of annual allocations, shall be determined by the state's Department of Finance estimate for the city.~~

C. The number of development allotments shall be divided between conventional single-family dwellings, mobile homes and multiple-family dwellings in a manner determined ~~each year~~ by the city council; provided, that no less than thirty-three percent of all allotments shall be awarded to single-family dwelling units. The number of affordable/elderly dwelling units shall be assigned in a manner consistent with state law for the total number of allotments to be assigned for that year. ~~No less than one-third of the total annual allotments shall be awarded to developments to the east of Monterey Road and no less than one-third of the total annual allotments shall be awarded to developments to the west of Monterey Road, with the remainder distributed on the basis of points received and without regard to the east/west distribution.~~ The city council may, if it chooses, further divide the allotments according to geography, price, development size, phasing, including the number of units and timing of allotments required to complete a project, and similar criteria as deemed necessary to provide for the general welfare.

D. For the competitions for allotments in fiscal years 2006-07 through 2009-2010, the City Council shall reserve a certain number of allotments for projects in the Downtown area. The number of allotments allocated, and the geographic limits of the Downtown area for this purpose, shall be determined by the City Council and may be amended, as necessary, to reflect changes in circumstances and needs. The Council may continue to reserve a certain number of allotments for projects in the Downtown Area after the 2009/10 fiscal year.

18.78.040 Development allotments--Applications and evaluations.

A. ~~The annual d~~Development allotments shall be allocated to proposed developments in accordance with a residential development control system set out in Part 3 of this article. This

system shall provide for awards of development allotments based on the number of points scored for all development proposals ~~for each year~~ within a competition. The City may conduct 1-year or 2-year competitions. The City may allocate a portion of the total allotment granted to an applicant as available in the subsequent year (i.e., in the event of a 1-year competition, a portion of the allotment is made available in the second year, and in the event of a 2-year competition, a portion is made available in the third year). The point scale used shall take into account the impact of the proposed development on the following public facilities and services: ~~schools,~~ water supply system, sanitary sewer and treatment plant, drainage and runoff, fire and police protection, traffic and other municipal services.

B. Proposed developments shall be awarded points for provision of schools, related facilities, open space, orderly and contiguous development, public facilities, parks and trails, low-income and moderate-income housing and housing for the elderly, diversity of housing types, and for quality of architectural design and site design.

C. Small residential developments provide special benefits to the city by encouraging local developers, providing design variety, and promoting utilization of smaller lots. These developments do not impose as high a burden on municipal services as do larger projects, because their demands are incremental and they tend to be in-fill developments. Such small developments may be unable to compete with larger developments in terms of the levels of amenities provided. In order to treat small developments in a manner reflecting their benefits to the community, the residential development control system shall be designed to provide for small development through appropriate means selected by the city council, such as a separate small project competition and a more streamlined and less costly process.

D. In implementing the provisions of the residential development control system and making awards of development allotments, ~~allocations~~ the city council shall comply with Government Code Sections 66000 et seq.

E. Up to 10 allotments per year may be set aside for vertical mixed-use projects. These reserved allotments may be awarded to projects that receive at least a minimum passing score through a competitive process or on a first-come, first-served basis.

The City Council may establish higher minimum passing scores for mixed-use projects and/or consistency with the guidelines for development contained in the City's Downtown Plan. The City Council may allow for a maximum of 20 unused mixed-use allotments to be carried over from year to year, if unused in prior years, for a maximum of 30 units potentially available for distribution in one year under this set-aside. Mixed-use projects eligible for allotments under this set-aside shall be no larger than 15 units. A single development project shall be eligible to receive allotments under this set-aside only once.

18.78.050 Emergency situations--Restrictions on development.

No residential development shall be permitted during a period of emergency or severe impaction of public facilities, as declared by the city council pursuant to provisions of this code. The declaration of an emergency or severe impaction situation may be based on determinations

of ~~emergency overcrowding of the schools,~~ mandatory water rationing, sewage system operating at ninety-five percent capacity, or other endangerment to the public health, safety or welfare. In the event of overcrowding in any public school serving Morgan Hill, the City Council shall work with the school district pursuant to Government Code sections 65970 et seq. to seek appropriate mitigation and prevent further overcrowding, including, as authorized by state statute, prohibiting residential development within the overcrowded school attendance area. The Council shall, in implementing this provision, comply with the provisions of Government Code Sections 65858, 65996, and any other applicable provisions of law.

18.78.060 Open space conversions.

A. No development ~~allocations~~ allotments shall be awarded for a development proposal pursuant to this chapter and the RDCS unless the public benefits included in the proposal are secured in a permanent and enforceable manner. Lands that are designated for private or public open space, greenbelts, parks, paths, trails, or similar scenic and recreational uses in a residential development allotment application under Part 2 of this article shall, once the application is approved, be limited to the uses specified in the application, through the use of permanent dedications, easements or similar devices.

B. With respect to development ~~allocations~~ allotments already awarded, wherever legally possible, no further building permits shall be granted for a project until such public benefits specified in the development application, particularly but not exclusively open space dedications, have been secured in a permanent and enforceable manner.

C. The lands within the city that are designated "open space" on the city's general plan land use/circulation elements map, as amended through ~~March 1, 1990~~ November 19, 2003, are reaffirmed and readopted through fiscal year ~~2009/2010~~2019/20. This provision shall not prevent the city council from designating additional lands as open space.

18.78.070 Urban service area restrictions.

A. The city shall neither apply to LAFCo, nor otherwise request or support, the addition of any land to its urban service area, until such time as the city council finds that the amount of undeveloped, residentially developable land ~~either to the east of Monterey Road or to the west of Monterey Road~~ within the existing urban service area is insufficient to accommodate five years' worth of residential growth beyond that required to accommodate the number of development allotments available in the next competition. ~~for the land on that side of Monterey Road~~. The projected rate of growth for purposes of this determination shall be the rate of growth provided for by the general plan and the RDCS, set out in Parts 2 and 3 of this article. After making such a finding of space insufficiency, the city may support the addition of land to the urban service area ~~of land only on the side of Monterey Road having the insufficiency, and~~ only to the extent necessary to support approximately five or fewer years of growth beyond that required to accommodate the number of development allotments available in the next competition ~~on that side of Monterey Road~~.

B. The city council may formulate standards by which it may make exceptions to subsection A of this section for desirable in-fill. "Desirable in-fill" means a tract of land not exceeding twenty acres and abutted on at least two sides by the city or abutted on one side by the city and having two other sides within a quarter-mile of a city boundary, as determined by a perpendicular line drawn from the side of the parcel to the city boundary, and whose inclusion into the urban service area would not unduly burden city services and would beneficially affect the general welfare of the citizens of the city. The standards set up for granting such exceptions must include criteria to prevent repetitively granting exceptions to the same applicant, development or parcel. The City Council, prior to approving any expansion of the Urban Service Area for desirable in-fill, shall make findings documenting that the expansion would not unduly burden city services, and that the expansion would beneficially affect the general welfare of the citizens of the City, as defined in the following paragraph.

Areas whose addition to the Urban Service Area would be considered to beneficially affect the general welfare of the citizens of the City include those which promote orderly and contiguous development by facilitating the provision of infrastructure improvements, or allow for the establishment of public facilities such as parks, schools, or other buildings to be owned or operated by the city, school district, water district, or any other public agency. Infrastructure improvements that would promote orderly and contiguous development are those that connect to the existing infrastructure (for example, the continuation of a dead-end street that would improve traffic circulation patterns), or otherwise complete or complement the existing system. The infrastructure improvements that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be installed, or the land needed for public facilities that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be conveyed to the public agency, within five years of the date the area is added to the Urban Services Area or upon its development, whichever occurs first. The commitment by the applicant to install the infrastructure improvements on which the City's findings are based, or convey the land needed for the public facilities on which the findings are based, must be secured prior to official action adding the area to the Urban Services Area, through a development agreement or other legally binding agreement recorded against the property. The infrastructure or land required to be provided by an applicant shall not exceed that needed to fully offset and mitigate all direct and cumulative impacts on services and infrastructure from new development proposed by the applicant.

The future annexation of one or more of the Existing County Subdivisions enumerated in section 18.78.030A may be necessary to allow the residents of those areas to receive additional municipal services. Given the developed status and the current provision of municipal services to these subdivisions, any of these Existing County Subdivisions may be added to the City Urban Service Area and annexed into the City without otherwise meeting the test for desirable infill development.

C. Part 2 provisions of this article are not intended, and shall not be applied, to restrict or constrain the discretion of the LAFCo, nor to prevent any action required by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 or other state statute or by any court judgment.

D. ~~Because of the shortage of services and resources facing the city (e.g., water, sewer, schools, streets, fire and police protection), and in~~ In order to assure that City ~~such~~ services and resources are not unduly burdened ~~further~~, urban sprawl and noncontiguous development must be discouraged. Therefore, for any land added to the urban service area between March 1, 1990, and the effective date of Measure P, December 8, 1990, ~~the ordinance codified in this chapter~~ and not considered in-fill as defined in subsection B of this section, the city shall not provide urban services to support any development at a higher density than that ~~is~~ provided for in the Santa Clara County general plan as of March 1, 1990.

18.78.080 Urban services extensions.

The city shall grant no new extensions of urban services for residences beyond its urban service area except in the event that:

A. Morgan Hill has entered into a mutual aid or reciprocal emergency agreement for police, fire or other emergency services to be provided by city facilities on county land; or

B. An owner of an existing development requests an extension due to the failure of an existing septic system or well and the city council makes a finding that denial of services to that development would have a direct adverse impact on the public health and safety.

Part 3. Residential Development Control System

18.78.090 Application--Procedure and contents--Fees.

A. An application for a development allotment shall be made to the city planning division ~~department~~ on a form provided by the city. Such application shall contain the following information and be accompanied by the following documents:

1. Site utilization map including:

a. Vicinity map to show the relationship of the proposed development to adjacent development, the surrounding area and the city,

b. Site use layout map showing the extent, location and type of proposed residential use or uses, the nature and extent of open space, and the nature and extent of any other uses proposed. The site use layout map is of major importance; the vicinity map may be shown as a small inset map;

2. Site development plan including lot layout to preliminary subdivision map standards; topography; lot sizes; street alignments showing coordination with city street system; existing and proposed buildings, trees, landscaped areas; open space; bicycle paths, equestrian trails or pathways;

3. Preliminary architectural plans including typical architectural elevations, types and numbers of dwelling units, proposed color of buildings;

4. Preliminary grading plans including a general indication of type, extent and timing of grading;

5. Narrative description of p~~P~~reliminary landscape plans including general indications of planting;

6. Housing marketability and price distribution including expected ranges of rental amounts or sales prices, low-income and moderate-income housing to be provided, and applicability to housing assistance plan, if any;

7. Statement regarding how the proposed development will comply with state law requirements regarding the mitigation of impacts of the development on school facilities. ~~Schools and other public facilities including needed schools, permanent or relocatable, or school impaction mitigation measure to be provided~~. Description of other needed public facilities to be provided, if any, such as critical linkages in the major street system, or other vital public facilities;

8. Development schedule including proposed schedule of development including phasing;

~~9. Financial information including financial information sufficient to enable the city to determine if the project has a reasonable chance of being undertaken and completed if a development allotment is awarded;~~

9~~10~~. Such other information as may be required by the planning manager ~~director~~.

B. Each application shall be accompanied by a reasonable fee set by the city council based on the cost to the city of the processing of the application. Such fee is in addition to any other fees such as rezoning fees, annexation fees, etc., and shall not be returned in the event that no development allotment is awarded.

C. An applicant may file only one application for any given property in any ~~given year~~ competition.

D. An application for a development allotment shall be filed with the city planning division ~~community development department~~ on a date determined by the planning manager, which shall be no later than twenty-one months preceding the fiscal year during which the allotments must be utilized. ~~November 1st of the fiscal year preceding the award of allotment.~~

18.78.100 Application--Evaluation by planning officer.

A. The planning officer (hereinafter referred to as PO) shall review each application and determine whether or not the proposed development conforms to the city's general plan. If the PO determines that a proposed development does not conform to the general plan, the application shall be rejected. The applicant shall be given a notice of such rejection within fifteen days after the submission of his application. Such notice shall be given by the PO by mailing a copy of the notice to the applicant at his address as shown in the application.

B. Within fifteen days after such notice is mailed, the applicant may appeal the decision of the PO to the city council by filing a written notice of appeal with the city clerk, who shall place the matter on the next available agenda for a regular council meeting. The city council shall consider the appeal at such regular meeting, and shall either affirm the decision of the PO to reject the application on the basis of nonconformity with the plans, reverse the decision by finding that the proposed development is in conformity with the plans, or permit the applicant to modify his proposed development to bring it into conformity with the plans. The decision of the council shall be final and conclusive.

18.78.110 Evaluation procedures--Generally.

Proposed developments found by the PO or city council to conform to the general plan shall be evaluated by the PO and awarded points as set forth in Section 18.78.115. The planning commission shall establish a specific set of standards and criteria to direct the PO in assigning points under each category in Sections 18.78.115 and 18.78.120. The PO shall submit his evaluation to the planning commission and the commission shall approve, disapprove or modify the PO's evaluation by simple majority vote.

18.78.115 Evaluation procedures--Impact on existing facilities--Point system.

A. Each proposed development shall be examined for its relations to and impact upon local public facilities and services.

B. The appropriate city department or outside public agencies shall provide recommendations to the PO and the PO shall rate each development by assigning from zero to two points for each of the following:

~~1. The capacity of the appropriate school to absorb the children expected to inhabit a proposed development without necessitating or adding to double sessions or other unusual scheduling or site or classroom overcrowding (written evaluation of the MHUSD);~~

1. ~~2~~The ability and capacity of the water system to provide for the needs of the proposed development without system extensions beyond those which the developer will consent to provide (comments of the city director of public works);

2~~3~~. The ability and capacity of the sanitary sewer distribution and treatment plant facilities to dispose of the waste of the proposed development without system extensions beyond those which the developer will consent to provide (comments from the city director of public works);

3~~4~~. The ability and capacity of the drainage facilities to adequately dispose of the surface runoff of the proposed development without system extensions beyond those which the developer will consent to provide (comments from the Santa Clara Valley Water District and the city director of public works);

4~~5~~. The ability of the city-designated fire department to provide fire protection according to the established response standards of the city without the necessity of establishing a new station or requiring addition of major equipment to an existing station, and the ability of the police department to provide adequate patrols for residential and traffic safety without the necessity of acquiring new equipment or personnel (comments from the fire and police departments);

5~~6~~. The ability and capacity of major street linkages to provide for the needs of the proposed development without substantially altering the existing street system (the desired target traffic level of service being no worse than ["D+"]~~"C"~~ level of service as defined in the 1985 Transportation Research Board Report # 209), except as otherwise allowed in the General Plan, and the availability of other public facilities (such as parks, playgrounds, etc.) to meet the

additional demands for vital public services without extension of services beyond those provided by the developer (comments from the appropriate department heads).

18.78.120 Evaluation procedures--Design and amenity criteria.

On quality of design and extent of contribution to public welfare and amenities, the PO shall examine each proposed development and shall rate each development by the assignment of no more than the maximum number of points allowable on each of the following:

A. The provisions of school facilities and amenities, needed schoolrooms in the form of permanent or relocatable buildings or the provision of other mitigating measures as attested by agreement with the MHUSD, to the extent such consideration is not in conflict with state law. A minimum of one-third of the points in this category shall be reserved for criteria such as the development's impact on existing bus routes, or classroom or site overcrowding .....25 points;

B. The provision of public and/or private usable open space and, where applicable, greenbelts .....20 points;

C. The extent to which the proposed development accomplishes an orderly and contiguous extension of existing development rather than leapfrog development, by using land contiguous to urban development within the city limits or near the central core and by the filling in on existing utility lines rather than extending utility collectors .....20 points;
(For purposes of this section, "the central core" is the area illustrated on the Central Core Map, attached as Exhibit B and described generally as that area bounded on the west by Del Monte Ave. from Wright Ave. to Ciolino Ave. and by West Little Llagas Creek from Cioliono Ave. to Cosmo St; on the east by the railroad tracks from the easterly prolongation of Wright Ave. to Main Ave., by Butterfield Blvd. from Main Ave. To Dunne Ave., and by Church St. from Dunne Ave. to the easterly prolongation of Cosmo St.; on the north by Wright Ave. and its easterly prolongation to the railroad tracks; and on the south by Cosmo St. and its easterly prolongation to Church St.)

D. The provision of needed public facilities such as critical linkages in the major street system, or other vital public facilities .....10 points;

E. Provision of parks, foot or bicycle paths, equestrian trails or pathways . . 10 points;

F. The provision of units to meet the city's need for low-income and moderate income and elderly housing and the extent to which such provision meets the goals of the housing element of the general plan including the distribution of housing types to provide neighborhoods of ethnic and economic diversity .....15 points;

G. The extent to which the proposed development itself consists of a diversity of housing types to meet the goals of the housing element of the general plan .....15 points;

H. Architectural design quality as indicated by the quality of construction and by the architectural elevations of the proposed buildings judged in terms of architectural styles, size and height .....15 points;

I. Site design quality as indicated by lot layout, orientation of the units on the lots, and similar site design considerations .....15 points;

J. Site and architectural design quality as indicated by the arrangement of the site for efficiency of circulation, on-site and off-site traffic safety and privacy.....15 points;

K. Site and architectural design quality as indicated by the amount of private safety and security provided in the design of the individual structures .....~~5~~10 points;

L. Site and architectural design quality as indicated by the amount and character of landscaping and screening and color of buildings .....10 points;

M. Site design quality in adapting the development to the setting, including the preservation of vegetation, trees, natural terrain, and other natural and environmental features .....~~15~~10 points;

N. The extent to which the proposed development exhibits overall project excellence and/or incorporates or otherwise embodies the concepts of Livable Communities, such as proximity to transit, pedestrian orientation, efficiency of street system, mixed-use, infill, and maximization of use of existing infrastructure. .....10 points.

18.78.125 Award and issuance of allotments.

A. The PO shall notify each applicant of his evaluation under Sections 18.78.110 through 18.78.120. Such notice shall be given in writing within seven days after the evaluation has been approved by the planning commission by mailing a copy of such notice to the applicant at his address as shown in his application. At the same time, the PO shall notify in writing the MHUSD and all other city departments and public agencies which provided input for the evaluation under Sections 18.78.110 through 18.78.120 of the result of that evaluation.

B. Proposed developments which have not been assigned a minimum of ~~nine~~ 7.5 points under Section 18.78.115 or a minimum of ~~one hundred twenty-five~~ one hundred sixty (160) points under Section 18.78.120 shall not be given a development allotment~~.~~, except for Micro projects (as defined by the City Council) and projects which are 100% affordable, for which the minimum passing score shall be one hundred fifty (150) points. ~~Any applicant whose proposed development has not been given the required number of points may appeal the matter of allotment evaluation to the city council as provided in Section 18.78.130.~~

C. Subject to the limitations set forth in this subsection and subsection F of this section, proposed developments which have received a minimum of 7.5 ~~nine~~ points under Section 18.78.115 and a minimum of one hundred sixty ~~twenty-five~~ points under Section 18.78.120 (or, for qualifying projects, one hundred fifty points) may be awarded an allotment. ~~for the following fiscal year~~ Where the number of residential units in proposed developments which have received the required number of points for a development allotment (either by planning commission's determination or by city council's determination on appeal) exceed the numerical limits established by the city council by ~~housing-type~~ competition category (micro, small, affordable, large market rate), development allotments for which the council-established numerical limit has thus been exceeded shall be awarded to the highest scoring projects based on ~~the basis of~~ the number of points received under Section 18.78.120~~.~~ ~~starting with those proposed developments receiving the most evaluation points for the affected housing-type category and proceeding in order down the list until the numerical limit established by the council has been reached starting with those proposed developments receiving the most evaluation points for the affected housing-type category and proceeding in order down the list until the numerical limit established by the council has been reached.~~ A project may be awarded fewer than the total number of allotments requested by it, and the surplus allotments awarded to the next highest

scoring development(s) if doing so would help create a more balanced and equitable distribution of allotments and help to achieve the goals of the General Plan. ~~Where allotments are made on the basis of comparative standing on the list, any applicant who has received the required minimum number of points, but who is not high enough on the list to receive a development allotment, may appeal the matter of allotment evaluation to the city council as provided in Section 18.78.130.~~

In the event that an applicant seeks a higher number of allotments than is available in a competition, the City Council may, in its discretion and in order to encourage high-scoring applicants to complete their projects, grant allotments for an additional fiscal year. For a one-year competition, the allotment may be allocated over two years, and for a two-year competition, the allotment may be allocated over three years.

D. Allotments shall be issued no less than 16 months prior to the start of the first fiscal year in which the allotments must be used. ~~for the next fiscal year shall be issued by April 1st of the preceding year and shall be limited to those applicants whose evaluations under Sections 18.78.110 through 18.78.120 are completed at least thirty days prior to the date of the issuance of allotments and whose application or evaluation is not being appealed to city council either by the applicant or by any other interested party at the time the allotments are issued.~~ Allotments shall be awarded for no more than three ~~two~~ fiscal years in a single competition.

E. Any applicant whose development evaluation has been completed and where any appeals, if applicable, have been resolved and who does not receive an allotment for the ~~fiscal year~~ competition will not be considered automatically for the subsequent competition, ~~fiscal year,~~ but must reapply under Section 18.78.090 for the next or subsequent ~~fiscal year~~ competition.

F. If a project receives an allotment in a competition for more than 50 percent of the units in the project but fewer than the total number of units needed to complete it, the additional units needed to complete it may be awarded to the project for the competition year immediately after that covered by the current competition. This additional allotment shall be considered a portion of the limited allotment for that future competition. The number of units awarded under this section for a future competition year shall be similar to the number of units awarded per year for the major portion of the project. ~~If an applicant desires approval of residential units in a single-residential development to be phased over more than one fiscal year, the applicant may apply to the city council for such approval. The city council may give such approval if it is demonstrated that the proposed project, if limited to one fiscal year, is not economically feasible because of the required off-site or other improvements required and other factors beyond the developer's control. The applicant shall be given the necessary additional allotments to complete the project in the next fiscal year; however, these additional allotments shall be considered a portion of the limited allotment for that next fiscal year.~~

G. To ensure that growth is orderly and not sporadic, dwelling units that are allocated for one fiscal year and not physically commenced according to an approved development schedule by the end of that fiscal year, shall lose their ~~allocation~~ allotment and must reapply under the development allotment process outlined in Section 18.78.090 if development is still desired by

the developer. An exception to the loss of ~~allocation~~ allotment may be granted by the city council if the cause for the lack of commencement was the city's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140, or extended delays in environmental reviews, ~~permit~~ delays not the result of developer inaction, or ~~allocation~~ allotment appeals processing.

For projects that include the sale of individual lots for custom development by individual purchasers, purchasers of the custom lots shall be given an additional 24 months to physically commence construction. If this extension proves insufficient, an applicant for a custom home may apply for an additional extension subject to the same rules and circumstances as outlined in this paragraph for other projects.

18.78.130 Appeal procedures.

A. An applicant may appeal to the city council for a review of the scoring of its proposed development project pursuant to Sections 18.78.110 through 18.78.120 ~~subsections B or C of Section 18.78.125~~ by filing a written notice of appeal with the city clerk within fifteen ~~ten~~ days after the notice of evaluation has been mailed as described in Section 18.78.125 (A).

B. The MHUSD or other public agencies which provided input for the evaluation under Sections 18.78.110 through 18.78.120 may appeal to the city council the evaluation under Sections 18.78.115 and 18.78.120 within fifteen ~~thirty~~ days after notice has been mailed as described in Section 18.78.125 (A).

C. Any citizen or group of citizens may appeal to city council the evaluation of any applicant by filing with the city clerk a petition signed by one hundred registered voters of the city within fifteen ~~thirty~~ days after the notice of evaluation has been mailed to the applicant as described in Section 18.78.125 (A).

D. In the event an appeal is filed under subsections A, B or C of this section, the city clerk shall place the matter on the next available agenda for a regular council meeting. The city council shall consider the appeal at such regular meeting at which time the council will hear the applicant or his representative and such other persons as may be able to assist the council in the determination of the matter on appeal. The council may affirm or modify the project scoring ~~the allotment evaluation~~ and its decision shall be final and conclusive.

18.78.140 Emergency situations--When declared--Action and review by council.

A. An emergency or severe impaction situation shall be any one or more of the following:

1. A finding by the director of public works that the sewage facility usage level exceeds ninety-five percent of the capacity of the system;

2. Mandatory city water-rationing measures in effect;

3. ~~Schools in MHUSD on "double sessions," or the~~ MHUSD notifies the City Council ~~has declared~~ that conditions of ~~an emergency~~ overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs, pursuant to

Government Code section 65971s. ~~"Emergency overcrowding" may be declared for one or more schools, based on criteria established by the MHUSD, including, but not limited to, a specified percent of student enrollment beyond a determined capacity of the affected schools~~;

4. ~~The MHUSD or other~~ Any public agency providing services essential to the public health and safety notifies city council in writing or by resolution that its ability to meet the public needs is severely impacted;

5. Any other endangerment to public health, safety or welfare which the city council determines to exist for the purposes of Part 3 of this article.

B. If any of these specified conditions exist, then the city council shall certify an emergency or severe impaction situation.

C. In addition, any citizen or group of citizens may petition the city council for declaration of an imposition of an emergency or severe impaction situation by filing with the city clerk a petition signed by ~~the greater of five hundred or~~ four percent of the registered voters of the city. The city council, at their next available regularly scheduled meeting, must then vote on a resolution of emergency or severe impaction situation. Certification and decertification of a petitioned emergency condition requires a minimum of three affirmative votes for passage.

D. In the event such an emergency or severe impaction is certified, no building permit and no allotment shall be issued unless the city council first specifically finds that the building permit or specific allotment ~~allocation~~ will not contribute additionally to the existing emergency or severe impaction situation, or that the building permit or specific allotment has adequately mitigated its additional impact.

E. The PO shall review all certified emergency or severe impaction situations at least quarterly, and shall determine whether conditions warrant continuation of the emergency or severe impaction. The PO shall report his findings to the city council, and notice of such findings shall be placed on the city council agenda and published in a newspaper of general circulation. If the city council finds, based on the PO's report, that the certified emergency or severe impaction situation no longer exists, it shall decertify the emergency.

F. In implementing Part 3 of this article, the city council shall comply with the provisions of Government Code Sections 65858, 65972, 65996, and other applicable state law requirements. Where those provisions conflict with this article, the state statute shall prevail.

18.78.150 Quarterly progress review--Failure to comply.

A. The planning officer shall review, on a quarterly basis, each proposed development which has received a development allotment to determine whether satisfactory progress is being made with the processing of the appropriate plans with the planning division~~department~~.

B. Should a developer fail to comply with the development schedule submitted with his application or as agreed with the city staff and council, or should he fail to initiate the processing of the appropriate plans, or should the development deviate below the points awarded for its initial application, the PO shall report such failure or deviation to the city council. Thereafter,

the council, ~~which,~~ after holding a hearing, may rescind all or part of the development allotment in favor of another ~~the next~~ development ~~on the list~~ which has qualified for such allotment and which is capable of commencement in the ~~fiscal~~ year for which the allotment was awarded.

Part 4. General Provisions

18.78.155 Duration of provisions.

This article shall remain in effect until and including fiscal year 2019/20.~~2009/2010~~.

18.78.160 Compliance with state and federal laws.

The provisions of this article shall not apply to the extent, but only to the extent, that they would violate the Constitution or laws of the United States or the state of California.

18.78.165 Severability.

A. If any provision or application of any provision of this article is held unconstitutional or violative of any state or federal law, the invalidation shall not affect the validity of any other provision or application of any provision. The voters of Morgan Hill declare that the provisions and applications of the provisions of this article are severable and would have been enacted as they were even though any other provision or application or applications are held unconstitutional or otherwise violative of law.

B. It is the intent of the voters of Morgan Hill, by enactment of this article, to extend and expand the essential residential development control provisions and policies of Measure ~~E~~ P. If this article is held invalid in its entirety, then ~~the provision of Section 4 of the ordinance codified in this article repealing Measure E shall be inoperative, and~~ Measure P~~E~~ shall remain in effect, as previously codified.

C. If any provision of Part 2 or 3 of this article is held invalid, the remainder of the ordinance codified in this article shall be given effect, and to the maximum extent feasible, shall be combined with the provision or provisions of Measure ~~E~~P that correspond to the invalidated provision. ~~Thus, the repeal of Measure E, provided for in Section 4 of the ordinance codified in this article, shall be inoperative with respect to those provisions of Measure E corresponding to any invalidated provisions of the ordinance codified in this article.~~

18.78.170 Unconstitutional taking of private property prohibited.

This article shall not operate to deprive any landowner of substantially all the market value of his property or otherwise constitute an unconstitutional taking without compensation. If application of the provisions of this article to a specific project would effect a taking, then pursuant to this article the city council may alter the provisions of this article, but only to the extent necessary to avoid such a taking. Any such adjustments shall be designed to carry out the goals and provisions of this article to the maximum extent feasible.

18.78.175 Amendment or repeal.

This article and the "Residential Development Control" section of the General Plan~~, including the amendments to the general plan and municipal code~~ were enacted into law by the voters and accordingly, may be amended or repealed only by the voters of the city at a municipal election.

Initiative Measure Section 4: General Provisions

1. Duration of provisions.

Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes, and the "Residential Development Control" section of the General Plan, enacted by the voters, shall remain in effect through fiscal year 2019/20.

2. Compliance with state and federal laws.

The provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan shall not apply to the extent, but only to the extent, that they would violate the Constitution or laws of the United States or the state of California.

3. Severability.

A. If any provision or application of any provision of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or the "Residential Development Control" section of the General Plan is held unconstitutional or violative of any state or federal law, the invalidation shall not affect the validity of any other provision or application of any other provision. The voters of Morgan Hill declare that the provisions and applications of the provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan are severable and would have been enacted as they were even though any other provision or application or applications are held unconstitutional or otherwise violative of law.

B. It is the intent of the voters of Morgan Hill, by their approval of the 2004 ballot measure amending the "Residential Development Control" section of the General Plan, and Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes, to extend and expand the essential residential development control provisions and policies of Measure P. If Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or the "Residential Development Control" section of the General Plan is held invalid in its entirety, then Measure P shall remain in effect, as previously codified.

C. If any provision of Part 2 or 3 of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or any provision of the "Residential Development Control" section of the General Plan is held invalid, the remainder of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General

Plan shall be given effect, and to the maximum extent feasible, shall be combined with the provision or provisions of Measure P that correspond to the invalidated provision.

4. Unconstitutional taking of private property prohibited.

Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan shall not operate to deprive any landowner of substantially all the market value of his property or otherwise constitute an unconstitutional taking without compensation. If application of the provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or the "Residential Development Control" section of the General Plan to a specific project would effect a taking, then the city council may alter the provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and/or the "Residential Development Control" section of the General Plan, but only to the extent necessary to avoid such a taking. Any such adjustments shall be designed to carry out the goals and provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan to the maximum extent feasible.

5. Amendment or repeal.

Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan, were enacted into law by the voters and accordingly, may be amended or repealed only by the voters of the city at a municipal election. In the event of ongoing reorganizations, revisions and updates to the General Plan and Municipal Code, the policies and provisions enacted by this initiative measure shall be retained and remain in effect until their expiration or amendment or repeal by the voters.

6. Implementation and Consistency.

A. Upon the effective date of this initiative ordinance, Section 2 of this initiative shall be deemed inserted into the Morgan Hill General Plan (unless all general plan amendments allowed by state and local law have already been approved during the calendar year in which this initiative is enacted, in which case Section 2 of this initiative shall be deemed inserted into the General Plan on January 1 of the following calendar year). The General Plan and the Municipal Code of Morgan Hill shall be interpreted so as to give immediate effect to the provisions of this initiative, as of the date Section 2 is deemed inserted into the General Plan.

B. As of the date the provisions of Section 2 of this initiative are deemed inserted into the Morgan Hill General Plan, Section 3 of this initiative shall likewise be deemed inserted into the Morgan Hill Municipal Code, and Measure P as enacted by the voters of Morgan Hill in November 1990, shall be deemed amended by the terms of this initiative ordinance, as set forth in Section 2 and Section 3 of this initiative measure, and the Municipal Code shall be interpreted to give immediate effect to the initiative provisions.

C. The City Council shall within 120 days of the enactment of this initiative amend the Morgan Hill General Plan as necessary to ensure internal consistency with all provisions of this initiative. Also within 120 days the City Council shall amend Article II of Chapter 18.78 of the City Planning and Zoning Codes, entitled "Specific Policies," relating to the RDCS, and any other land use regulations as necessary to conform to all provisions of this initiative.

D. The development allotments distributed for fiscal years 2004/2005 through 2006/2007 awarded under Measure P shall remain in effect, except that under this initiative measure they may be supplemented based on the 2004 biennial computation of available development allotments, pursuant to section 18.78.030 (B). New allotments for fiscal year 2006/2007 and following shall be governed by the provisions of this initiative measure.

111903 CC Initiative A.doc

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT

MEETING DATE: November 19, 2003

Agenda Item # 21

Prepared By:

_____
Planning Manager

Approved By:

_____
Community Development Director

Submitted By:

_____
City Manager

REIMBURSEMENT OF THE APPEAL APPLICATION FEE FOR THE SANTA CLARA VALLEY AUDUBON SOCIETY AND COMMITTEE FOR GREEN FOOTHILLS

RECOMMENDED ACTION(S):

1. Consider request to reimburse the fee; and
2. Provide direction to staff

EXECUTIVE SUMMARY:

The above applicants filed an appeal of the staff decision to approve a Temporary Use Permit to allow operation of an existing golf course at 14830 Foothill Avenue. The TUP was issued to maintain the existing environmental conditions on the golf course pending completion of an Environmental Impact Report (EIR). The Planning Commission considered the appeal on October 14, 2003. On October 28, 2003, the Commission adopted the attached Resolution No. 03-80 upholding the administrative approval of the TUP. The appellants have decided not to appeal this decision to the City Council. The attached Planning Commission memorandum dated October 14, 2003 and meeting minutes provide additional background information on this item.

The applicant's appeal includes a request for reimbursement of the City's appeal fee. In accordance with Section 18.64.070(A) of the Municipal Code, except where an appeal is filed by the City Manager or any City Council member in pursuance of official duties, a written notice of appeal shall be accompanied by a fee, as established by resolution of the City Council. The fee for processing an appeal of an administrative decision is $1084. The appellants are requesting this fee be waived and refunded for the reasons stated in the attached notice of appeal letter dated September 5, 2003. The filing fee covers the City's cost of processing an appeal application before the Planning Commission. The applicant's appeal was processed to a final decision and the City therefore incurred the full cost of processing this application.

Staff is not recommending that the Council reimburse the appeal fee as it would set a precedent for future requests and would be contrary to the Council's cost recovery policy. Should the Council wish to reimburse the applicant for the appeal fee; the Council should allocate General Fund reserves to reimburse the applicant for the fee that has already been paid.

FISCAL IMPACT:

No fiscal impact should the Council deny the request. General Fund reserves would be reduced by $1,084 should the Council wish to approve the request.

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT

MEETING DATE: November 19, 2003

Agenda Item # 22

Prepared By:

_____
Dep Dir PW/Operatins

Approved By:

_____
Public Works Director

Submitted By:

_____
City Manager

INTERIM DOG PARK

RECOMMENDED ACTION(S):

Approve Parks and Recreation Commission Recommendation to:
1) Pursue development of an agreement with PG&E to develop an Interim Off-leash Dog Park on PG&E Property in Morgan Hill as identified in this report.
2) Direct staff to include consideration for funding an Off-leash Interim Dog Park as a part of the Capital Improvement Budget Preparations for Fiscal Year 2004-05

EXECUTIVE SUMMARY: Over the past several months the Parks and Recreation Commission (PRC) and staff have been approached by a citizen's group requesting the City pursue development of an off-leash Dog Park. This group has approximately 10 active members. Staff worked with this citizen's group and the PRC to analyze potential locations for an off-leash Dog Park.

The Parks & Recreation Programming Master Plan completed in January 2001 recommends that property be acquired and construction be completed for an off-leash Dog Park in the second priority phase of projects 6-10 years following the completion of the Master Plan. The Master Plan identified two potential properties for this facility: the Santa Clara Valley Water District (SCVWD) San Pedro Percolation Ponds site & the County owned Malaguerra Park site.

As Council is aware the San Pedro Ponds Trail Project is being developed at the SCVWD San Pedro Percolation Ponds site. A Biological Study completed as part of the CEQA Process would not support an off-leash Dog Park at this site due to the presence of waterfowl and other nesting birds.

The Santa Clara County Parks and Recreation Department informed staff that the Malaguerra site is soon to be evaluated for use as a part of The Coyote Trail Master Plan process. The County invited the City of Morgan Hill to participate in this process but advised us that they are not considering an off-leash Dog Park at the Malaguerra site at this time.

On October 21, 2003, staff reported to the PRC regarding the potential locations for both interim and permanent facilities. This staff report is attached as Exhibit A. The PRC is recommending that Council approve the pursuit of an agreement with PG&E to develop a 10 year interim facility at a property currently owned by PG&E at the east end of Noble Court. This property is directly south of the existing PG&E substation on W. Main Avenue. A map showing this site is attached as Exhibit B. Photographs of the site are attached as Exhibit C. Based on preliminary analysis staff has found this property to be suitable for this purpose.

Staff has obtained an example agreement from the City of San Ramon where in July of 2000 the City of San Ramon and PG&E entered into an agreement for the development of an off-leash Dog Park on PG&E owned property. PG&E Land Development representatives informed staff that a formal submittal process would require 6 months review time. The cost to the City of San Ramon for the license agreement with PG&E was $2,500. This does not include the capital improvements cost. The attached Exhibit D shows a preliminary cost estimate for typical improvements for an off-leash Dog Park Facility. Photographs of typical off-leash Dog Park Facilities in the Cities of Sunnyvale and Mountain View are attached as Exhibit E.

There is no funding appropriation within the Five Year CIP for an off-leash Dog Park. The informal citizen's group has indicated their willingness to fundraise and donate services for Capital and Operating expenses. Part of the PRC's recommendation is to include the consideration for funding for the development of an off-leash Dog Park in the 2004-05 CIP Budget Process.

FISCAL IMPACT: None at this time.

Exhibit E

Interim Off-leash Dog Park Facility
Preliminary Capital Improvement Cost Estimate
November 19, 2003

The Parks and Recreation Master Plan estimates capital improvement costs for an off-leash Dog Park Facility to be $100,000.

The following Preliminary Cost Estimate is based on developing a 1.5 acre off-leash dog park at the PG&E owned site at the east end of Noble Court:

Property Acquisition	$0
License Agreement Fee	2,500
Utilities-Water only no Sewer	5,000-10,000
Sewer (if required)	50,000-70,000
Turf & Irrigation	105,000
(Decomposed Granite Only)	45,000
Fencing – Vinyl Coated or Plastic Slats	14,000
Gates, Other Enclosures	
Benches, Shade Structure, Trees	20,000
Total	$86,500- 221,000

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT

MEETING DATE: NOVEMBER 19, 2003

Agenda Item # 23
Prepared By:
Margarita Balagso
Approved By:
Manager, Recreation & Community Services
Submitted By:
City Manager

TITLE: LIBRARY COMMISSION RECOMMENDATION REGARDING CYCLE III APPLICATION FOR LIBRARY BOND ACT OF 2000 GRANT

RECOMMENDED ACTION(S):

Receive recommendation from Library Commission regarding Cycle III application for Library Bond Act of 2000 Grant

EXECUTIVE SUMMARY:

On November 10, 2003 the Morgan Hill Library Commission approved the following recommendation:

> The Library Commission recommends to the City Council that Morgan Hill not apply for Cycle III of the Library Bond Act of 2000 grant due on January 16, 2004

Morgan Hill's Cycle II grant application for the Library Bond Act of 2000 did not receive a grant award at the Public Hearing the Library Bond Act Board held in Sacramento on October 28, 2003. The application received an overall rating of 3 out of 4 possible points. This placed the application in the second tier of "Very Good" rather than the fist tier of "Outstanding".

On November 7, 2003, Morgan Hill participated in a review of the City's application via teleconference with three members of the review panel. Participants representing Morgan Hill included Edward Tewes, City Manager; Julie Spier, Recreation and Community Services Manager; Jeanne Gregg, Library Commission Chair; Sarah Flowers, Deputy County Librarian; Evelyn Howard, Consultant to the Library; and Margarita Balagso, Management Analyst. Discussion during the teleconference included the rating the application received in each of the following categories:

1) Joint Use Agreement
2) Needs Assessment
3) Plan of Service - Building Program
4) Technology Plan

A discussion of the appropriateness of site will take place with Library Bond Act Manager, Richard Hall, at a later date. The rating received for appropriateness of site decreased from a "4" in Cycle I to a "3' in Cycle II. Upon review and discussion of the ratings received, members of the Library Commission indicated Morgan Hill's application would need to be significantly altered in order to compete with the current and anticipated pool of applicants. The short time frame is not adequate to make the number of changes required and would require a significant amount of staff time from both the City and Library staff and included an assessment of the joint use agreement with the School District. Therefore the Commission feels the City should not move forward with the Cycle III application.

FISCAL IMPACT: None except the lost opportunity to be considered for grant funding. If council decides to submit, there will be a cost factor depending on the amount of effort Council wants applied to making changes to the proposal.

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT

MEETING DATE: November 19, 2003

Agenda Item # 24

Prepared By:

Council Services & Records Manager/ City Clerk

Submitted By:

City Manager

REQUEST FROM THE MORGAN HILL BRANCH OF THE AMERICAN ASSOCIATION OF UNIVERSITY WOMEN (AAUW) TO WAIVE SPECIAL EVENT PERMIT FEES

RECOMMENDED ACTION(S):

1. Consider requests to waive fees; and
2. Provide Direction to staff

EXECUTIVE SUMMARY:

The City Council has received a request from Barbara F. Palmer, Wildflower Run Director, on behalf of the Morgan Hill Branch of the AAUW, to waive the $125 Special Events Permit processing fee for their 21st annual Wildflower Run scheduled for Sunday, March 28, 2004 at Live Oak High School. Ms. Palmer's letter is attached for Council's reference. Staff will note that the AAUW has paid the $125 Special Event Permit fees in past years.

As the Council knows, the Community Promotion budget was reduced this fiscal year to address the City's fiscal constraints. Staff allocated $17,400 under the Community Promotions budget. The $17,400 has been earmarked for Fiscal Year 2003-04 as follows: 1) $2,000 - Taste of Morgan Hill (showcase City of Morgan Hill projects/activities); 2) $2,900 - Youth Empowered for Success activities; and 3) $12,500 for Independence Day Inc. (IDI) Fourth of July activities. Staff did not fund for other non-profit requests.

Staff is not recommending that the Council waive the Special Events Permit fee as it would set a precedent for future requests by non profits and would be contrary to the Council's cost recovery policy. Should the Council wish to assist this non profit organization, the Council can: 1) reduce funding from YES or IDI, Inc. to pay for the Special Event Permit (Taste of Morgan Hill utilized the limited funding earmarked for that event); or 2) allocate General Fund reserves to pay for the Special Events Permit.

FISCAL IMPACT: No fiscal impact should the Council deny the request or fund from the current allocated Community Promotion funding. General Fund reserves would be impacted to the degree the Council wishes to support/fund City fees for non-profit organizations. Should the Council choose this course of action, funding from the General Fund reserves would need to be transferred to account 010-42248-1220.

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT

MEETING DATE: November 19, 2003

Agenda Item # 25
Prepared By:
Finance Director
Submitted By:
City Manager

WATER RATES

RECOMMENDED ACTIONS:

1) Direct staff to set a water rate and water conservation workshop and to set a January 21, 2004, public hearing for consideration of additional increases in water rates effective April 2004 and January of 2005, 2006, and 2007
2) Direct staff to return with a rate structure at the proposed workshop for commercial irrigation customers to encourage conservation
3) Direct staff to initiate steps to issue water revenue bonds
4) Direct staff to take steps necessary to make the City's "Water Conservation Landscape Guide" a requirement for all new development

EXECUTIVE SUMMARY: On September 24, the City Council accepted the Finance Director's report concerning the necessity of implementing the already approved 2% water rate increase, effective January 2004, and also directed staff to return with a full analysis of water revenues and costs and with proposed water rates through 2007.

In the attached memo, staff has analyzed water operations, rate stabilization, capital projects, and impact fee fund activity and fund balances for the period July 2002 to June 2007. Staff has compared financial activity and balances projected by the City's rate consultant, Hilton Farnkopf & Hobson in their Water and Sewer Fund Revenue Requirements Study dated 10/17/02, with current staff projections. The revenue requirement, or amount that needs to be generated by rate revenue for the period July 2002 through June 2007, has been estimated by staff to be $34.4 million, or $3.1 million more than projected funding from existing rates.

The need to raise additional revenue is primarily related to unexpected perchlorate costs. The City will have spent $1.4 million on drilling wells, building perchlorate plants, removing nitrates, and monitoring perchlorate in the water supply by June 2004, and expects to spend a whopping $3.2 million on perchlorate related costs by June 2007, which may not be immediately reimbursed by Olin Corp. Lower rate revenue of $798,000 also contributes to this shortfall, and this reflects recent relatively flat growth in the volume of water sold to the City's customers, in contrast to the growth anticipated by the consultant. The slowdown in the commercial area has contributed to this drop in anticipated revenue. The $214,000 in higher operations costs also contributes to the shortfall, and results from higher electricity and personnel costs than those projected by the consultant.

One way to achieve this goal would be to increase water rates across the board by an additional 6% on April 1, 2004, and by the same amount on each January 1 of 2005, 2006, and 2007. The City should also issue revenue bonds by early next fiscal year to generate approximately $5 million to cover the costs of various impact fee related projects. The City has already loaned $460,000 in water rate revenues to the water impact fund and it is anticipated that the City will loan an additional $2.2 million to the impact fund for projects in process this fiscal year.

On September 24, the City Council also indicated that it wanted to discuss strategies for decreasing water usage and conservation, including educating the public about these issues. In response, Public Works staff has provided the attached Water Conservation Summary. Public Works staff also advocate for a stringent water conservation program by recommending that staff to take steps to make the City's attached voluntary "Water Conservation Landscape Guide", adopted in 1990, mandatory for all new development.

In addition, the existing water rate structure could be modified to encourage conservation. Currently, there is only one tier for irrigation accounts. Consequently, such customers are not financially encouraged to use less water. Staff recommends that the City Council direct staff to return with a rate structure for commercial irrigation customers to encourage conservation. If commercial irrigation usage rates for top tier users were increased more than 6%, the 6% rate could be decreased somewhat for other users. This topic is also discussed further in the attached staff memo.

FISCAL IMPACT: The proposed water rate increases and debt financing would fully fund water needs.

CITY OF MORGAN HILL

Memorandum
Finance Department

Date: November 19, 2003

To: Ed Tewes, City Manager

From: Jack Dilles, Finance Director

Subject: **WATER RATES**

EXECUTIVE SUMMARY: On September 24, the City Council accepted the Finance Director's report concerning the necessity of implementing the previously approved 2% water rate increase, effective January 2004, and also directed staff to return with a full analysis of water revenues and costs and with proposed water rates through 2007. Under Resolution No. 5638, the rate structure must provide for the following reserve levels:

a) Operating Reserve amounting to 25% of annual operating expenses
b) Capital Reserve equal to the greater of one year's average annual five-year Capital Improvement Program costs or the minimum amount necessary to keep the Capital Reserve above $0
c) Rate Stabilization reserve amounting to 20% of annual operating revenue

Staff has analyzed water operations, rate stabilization, capital projects, and impact fee fund activity and fund balances for the period July 2002 to June 2007. The revenue requirement, or amount that needs to be generated by rate revenue for the period July 2002 through June 2007 in order to meet operating, capital, and reserve requirements, has been estimated by staff to be $34.4 million, as detailed graphically on Attachment A, or $3.1 million more than projected funding from existing rates.

In Attachment B, staff has compared financial activity and balances projected by the City's rate consultant, Hilton Farnkopf & Hobson (HFH) in their Water and Sewer Fund Revenue Requirements Study dated 10/17/02, with staff projections based upon current spending plans and previously adopted 2% rate increases on each January of 2004 through 2007. The analysis shows that, with no further revenue increases or spending changes, the City would have approximately $1.7 million in fund balance for all rate financed funds combined at June 30, 2007, or $2.7 million less than the $4.4 million anticipated by HFH at the time the study was adopted. Attachment C graphically reflects the shortfall in projected funding compared to fund balance requirements for the five year period ending June 2007. The total drop in fund balance is attributable to the following:

REVENUES:	
Less rate revenue than projected by consultant	(797,352)
Increase in other revenues/interest earnings	512,499
NET REVENUE SHORTFALL	*(284,853)*
OPERATING COSTS-OTHER THAN PERCHLORATE	
Higher pump tax costs paid to Water District	(36,884)
Higher other operating costs (electricity & personnel costs)	(213,519)
TOTAL HIGHER NON-PERCHLORATE OPERATING COSTS	*(250,403)*

PERCHLORATE RELATED COSTS	
Perchlorate costs	(2,419,722)
New well related to perchlorate	(800,000)
TOTAL PERCHLORATE RELATED COSTS	*(3,219,722)*
CAPITAL PROJECTS (NON-IMPACT FEE PROJECTS)	
Lower capital project costs	350,578
Transfers to impact fee fund (to be repaid)	(40,889)
Olin reimbursement reflected by consultant as impact fund revenue	800,000
NET CAPITAL PROJECTS SAVINGS	*1,109,689*
TOTAL SHORTFALL IN CONSULTANT'S PROJECTIONS	**(2,645,289)**

To reach the target reserve levels, it is necessary to generate $3.1 million in new revenues. One way to achieve this goal would be to increase water rates across the board by an additional 6% on April 1, 2004, and by the same amount on each January 1 of 2005, 2006, and 2007. In Attachment D, staff has compared financial activity and balances projected by HFH with staff projections based upon current spending plans, previously adopted 2% rate increases on each January of 2004 through 2007, and proposed 6% increases (as a separate line item). Attachment E graphically reflects how projected funding would meet revenue requirements by June 2007 when the 6% rate increases are included.

The City should also issue revenue bonds by early next fiscal year to generate approximately $5 million to cover the costs of various impact fee related projects. The City has already loaned $460,000 in water rate revenues to the water impact fund and it is anticipated that the City will loan an additional $2.2 million to the impact fund this fiscal year. The City loans would be repaid with bond proceeds and the bonds would be repaid with impact fees. Both Attachments B and D reflect this bond issuance and repayment. The bond issuance is essential because, without such financing, the Water Impact Fund would not be in a financial position to repay the Water Operations Fund and the City would have to raise rates further to cover the cash flow associated with completing water projects benefiting new development.

As can be seen on the above schedule, the need to raise additional revenue is primarily related to unexpected perchlorate costs. The City will have spent $1.4 million on drilling wells, building perchlorate plants, removing nitrates, and monitoring perchlorate in the water supply by June 2004, and expects to spend a whopping $3.2 million on perchlorate related costs by June 2007. This does not include the $800,000 in costs related to drilling the San Pedro Well, for which staff expects Olin Corporation to fully reimburse the City, nor does this include the expected $200,000 Santa Clara Valley Water District contribution for the Tennant Well perchlorate removal plant. To date, the City has received approximately $464,000 of the $800,000 San Pedro cost from Olin. The City is actively seeking additional reimbursements above the $800,000 from Olin, and as those amounts are received, they could be credited to rate payers if reserve levels are adequate at that time.

It should be noted that the Santa Clara Valley Water District increased the water pump tax it charges the City for water purchases in July 2003 by 14% from $140 to $160 per acre foot, and their staff has projected annual $20 increases in July 2004 through July 2008, resulting in $37,000 more in costs than projected by the consultant. This does not have a material effect on overall projections within the five year period because less water has been purchased than the consultant projected. However, these likely increases portend a larger fiscal impact after 2007.

The $214,000 in higher operations costs result from higher electricity and personnel costs than projected by the consultant.

Lower rate revenue of $798,000 reflects recent relatively flat growth in the volume of water sold to

the City's customers, in contrast to the growth anticipated by the consultant. The slowdown in the commercial area has contributed to this drop in anticipated revenue. The rate revenue has been offset by $512,000 more than projected by the consultant for other types of revenue, such as front footage/offsite charges, meter installations, fire hydrant charges, utility account set-ups, late fees, and service calls.

On September 24, the City Council also indicated that they wanted to discuss strategies for decreasing water usage and conservation, including educating the public about these issues. In response, Public Works staff has provided the attached Water Conservation Summary. In addition, Public Works staff advocate for a stringent water conservation program for development by recommending that the City Council direct staff to take steps to make the City's attached "Water Conservation Landscape Guide", adopted in 1990, mandatory for all new development.

In addition, the existing water rate structure could be modified to encourage conservation. The rate consultant did not recommend any changes to the residential rate structure because the consultant believed that the City's three tiered system encourages conservation. However, it may be appropriate to modify the rate structure for commercial irrigation rates. Currently, there is only tier for irrigation accounts. Consequently, such customers are not financially encouraged to use less water. Staff recommends that the City Council direct staff to return with a rate structure for commercial irrigation customers to encourage conservation. If commercial irrigation usage rates for top tier users were increased more than 6%, the 6% rate could be decreased somewhat for other users. Some cities, unlike Morgan Hill, do provide tiered rate structures for commercial customers. Three examples are:

Gilroy:	$0.52 per gallon for the 1st 3,000 gallons
(for all commercial)	$1.24 per gallon up to 30,000 gallons
	$4.02 per gallon above 30,000 gallons
Mountain View:	$2.11 per ccf for the first 20 ccf
(for residential & commercial:	$2.27 per ccf up to 200 ccf
varies by meter size: example:	$4.20 per ccf above 200 ccf
is for 1&1/2" meter)	
Sunnyvale:	$0.80 per ccf for the 1st 6 ccf
(for all commercial)	$1.55 per ccf up to 20 ccf
	$1.65 per ccf up to 50 ccf
	$1.70 per ccf up to 500 ccf
	$1.75 per ccf up to 1,250 ccf
	$1.80 per ccf up to 2,500 ccf

However, since irrigation usage rates only bring in about $220,000 in current annual usage revenue, it is not expected that increases in irrigation rates would generate much money compared to the $3.1 million revenue requirement. In addition, successful water conservation efforts would decrease rate revenue, which might result in higher increases for other users.

WATER CONSERVATION

City of Morgan Hill

October 29, 2003

Introduction:

The following narrative is a summary of water conservation in the City of Morgan Hill. The City has implemented measures of its own and has the resources of the Santa Clara Valley Water District ("District") available to it. In addition, numerous public agencies and private concerns are able to provide assistance to the City of Morgan should drought conditions warrant a more comprehensive water conservation program.

The City obtains all of the water for its municipal water system from the local groundwater basins. The City overlies the Llagas sub-basin of the South Santa Clara Valley Groundwater Basin. The Llagas sub-basin covers an area of approximately 74 square miles and has an estimated capacity of 475,000 acre feet. The District manages an extensive groundwater recharge program whereby water collected in local reservoirs and the State Water Project is released into recharge basins in the valley floor.

Currently, the City employs both active and passive programs for water conservation. The passive program relies primarily on voluntary efforts by citizens, businesses, and the development community. The active program relies on the City's water rate structure which discourages wasting of water. The bulk of the City's program is included in the City of Morgan Hill Urban Water Management Plan ("Plan") which was last updated in February of 2002. The Plan was prepared in response to the Urban Management Planning Act.

Pump Tax and Water Conservation:

The City pays to the Santa Clara Valley Water District an on-going ground water replenishment charge (i.e. pump tax) for water drawn from the municipal wells. For the fiscal year '03/'04 budget the estimated amount of pump tax paid by the City to the District is $1,107,404. The majority of this tax goes towards ground water replenishment with 4% (approximately $44,300) earmarked for water conservation.

Current City Programs

1. Urban Water Management Plan

As mentioned above, the City has prepared an Urban Water Management Plan. The Urban Water Management Planning Act requires that "every urban water supplier shall prepare and adopt an Urban Water Management Plan". The Act requires that the Plan be updated every fifth year and the City has complied by updating the initial 1985 Plan in 1990, 1996, and in 2002. The purpose of the Plan is to establish water resource planning for the community and includes the following areas of concern: a.) Overview

and understanding of the water supply system; b.) Analysis of water use; c.) Water shortage contingency planning; and d.) Water use efficiency.

The water conservation component of the Plan relies on City water rates and on District programs and resources which will be discussed below.

2. Water Conservation Landscape Guide

In 1990, with Resolution No. 4371 the City Council adopted the City of Morgan Hill Water Conservation Landscape Guide ("Guide"). The purpose of the Guide is *"...to promote efficient water use through proper landscape design and management."* It is intended to apply to all new industrial, commercial, and residential projects reviewed by the Architectural and Site Review Board.

This document is meant to provide landscape designers with technical guidance in the areas of landscape planning, plant selection, and irrigation systems. The Guide also provides a comprehensive list of drought tolerant plants that adapt well to local soil and climate conditions. The Guide is merely a guide and not mandatory with the exception that any residential developer wishing to score Measure P points for low water use landscaping shall incorporate the Guide.

3. Architectural Review Handbook

The Architectural Review Handbook was prepared by the City to assist developers in understanding and complying with the requirements of the City's Zoning and Design Review Ordinances. The standards contained in the Handbook are meant to expedite the development review process and clarify portions of the Zoning and Design Review ordinances. The document itself is not enforceable, however, the code provisions contained within are.

The portion of the handbook that addresses landscaping does suggest water conserving methods but goes no further than suggestions. *"Water conserving techniques should be incorporated into all landscape plans." "Low flow irrigation systems are encouraged."*

4. Municipal Code

In various sections of the Municipal Code water use is addressed in different manners depending on the circumstances. Under Title 13, Public Services, the City has the right to shut off water in the event of a stoppage in water supply and has the right to ration water in cases of emergency. In addition, this section makes it unlawful to waste water.

Under Title 18, Zoning, all development, excluding agricultural, is required to install and maintain landscaping. The part of Title 18 that addresses Residential Development Control (Measure P), residential development competing for building allotments can

score additional points for providing landscaping and irrigation systems that conserve water use. The points can be obtained by incorporating 50% of plant material contained in the City's Water Conservation Landscape Guide.

5. Staff Time

City staff periodically meets with the District to discuss water conservation issues. The Water District holds monthly meetings with representatives from area cities to discuss water use efficiency. Staff was active during the summer months contacting the larger water users about conserving irrigation water. In the current fiscal year budget, $8,213 is set aside for water conservation.

Current Santa Clara Valley Water District Programs

Residential:

1. Water-Wise House Calls

Water-wise house calls are available to all residents of single-family homes, condominiums, town houses, apartments, and mobile homes.

- A technician will check toilets for leaks, measure showerhead flow rates, measure faucet flow rates, evaluate the efficiency of irrigation systems, and provide a personalized irrigation schedule. Toilet flapper valves, showerheads, and aerators are available, if needed.

2. Clothes Washer Rebates

Residents who buy a high-efficiency (Energy Star) clothes washer at a participating retail or online store are eligible for a $150 rebate from the Santa Clara Valley Water District. An additional $50 rebate from the National Double Your Savings with Energy Star Campaign is offered on qualifying models from certain manufacturers such as Amana, Kenmore, and Maytag. Residents should contact their retailer to see a list of qualified models. PG&E also has an additional $75 rebate on certain models.

3. Coming Soon: Low Flush Toilet Rebates

The ultra low flush toilet rebate may be returning soon. The district is currently working on funding for the program. This program may also include commercial establishments.

Commercial:

1. Irrigation Technical Assistance Program (ITAP)

   Upon request, a technician from the District will evaluate commercial or residential areas of 1 acre or more with a dedicated landscape meter.

   - The five components of the ITAP evaluation are: system check, hydrozones and budgets, scheduling and tracking usage, site report, and follow-up services.

2. Commercial Clothes Washer Rebate Program

   Rebates similar to the residential clothes washer program are available for commercial laundromats and common area laundry rooms.

3. Pre-rinse Sprayer Program

   A free high efficiency pre-rinse kitchen sprayer including free installation is available to California restaurant owners. The high velocity spray pattern increases performance and efficiency and uses less hot water.

4. WET Program

   Commercial and industrial businesses remodeling or changing process in an existing building have financial incentive available to reduce wastewater. The District will rebate up to $4 per hundred cubic feet up to a maximum amount of $50,000 if the business uses up to 100 hundred cubic feet annually.

5. Coming soon: Water Surveys for Commercial Establishments

   Free water evaluations for indoor establishments may be available soon.

6. Coming Soon: Grant Funding for Dedicated Landscape Meters

   Grant funding for the installation of a dedicated landscape water meter may be available to large commercial and mixed-use accounts that have 1 acre or more of dedicated landscape.

Outreach:

1. Landscape Contractor Classes

   Free hands-on training in Electrical and Valve Troubleshooting for landscape contractors has been made available in English and Spanish.

- Topics include basic hydraulics of an irrigation system, increasing distribution uniformity, and common mechanical and electrical problems.

2. Hotel and Restaurant Workshop

Greening Your Bottom Line, a workshop for restaurants and hotels has been offered by the District.

- Topics included: top 10 water and energy savers in commercial establishments, green business recognition programs, water efficiency rebates, food waste recycling, free spray valve program, pest control and cleaning practices, hotel laundry water reuse systems, and waste stream reduction.

Water Recycling:

The Santa Clara Valley Water District promotes water re-use and recycling by offering technical assistance to the private and public sector. They offer a model water recycling ordinance prepared by WaterReuse Association, a national organization dedicated to increasing the beneficial use of recycled water.

The South County Regional Wastewater Authority (SCRWA) which operates the wastewater treatment plant in Gilroy currently pumps recycled water (tertiary treatment) from that facility to several locations in Gilroy. In September of this year, approximately 20 million gallons of recycled water was utilized. SCRWA in conjunction with the Water District is currently preparing a study to expand the recycled water program in the south county area, although the end users will predominantly be in the Gilroy area. The water recycling plan is looking at extending recycled waste water to Morgan Hill, either by the construction of pipelines and pumping systems from the SCRWA plant, or by constructing a "scalping" recycling plant in or near Morgan Hill.

CITY COUNCIL & MORGAN HILL FINANCING AUTHORITY STAFF REPORT

CITY OF MORGAN HILL

Agenda Item # 26

Prepared By:

_____
Finance Director

Submitted By:

_____
City Manager

MEETING DATE: NOVEMBER 19, 2003

REFINANCING OF WATER FACILITIES LOAN

RECOMMENDED ACTIONS:

1. As the Authority Commission of the Financing Authority, adopt the Resolution approving bylaws of the Authority.
2. As the City Council, adopt the Resolution approving as to form and authorizing the execution and delivery of a loan agreement and an assignment in connection with the refinancing of bonds and authorizing certain other matters relating thereto.
3. As the Authority Commission of the Financing Authority, adopt the Resolution approving as to form and authorizing the execution and delivery of a loan agreement and an assignment in connection with the refinancing of bonds and authorizing certain other matters relating thereto.
4. As the City Council, approve agreements with RBC Dain Rauscher Inc. for financial advisory services and with Richards, Watson & Gershon for special legal counsel services, and direct the City Manager to execute these agreements.

EXECUTIVE SUMMARY: Staff proposes that the Authority Commission of the newly formed Morgan Hill Financing Authority first adopt the Resolution establishing bylaws of the Financing Authority. In order to refinance the existing water facilities loan between the City and the California Statewide Communities Development Authority in the most practical and efficient manner, staff and special legal counsel propose that the Authority Commission and the City Council then each adopt Resolutions which approve the attached Loan Agreement and Assignment Agreement.

Under the terms of the Loan Agreement, the Financing Authority agrees to loan to the City an amount sufficient to refinance the City's current obligations to the California Statewide Communities Development Authority for the outstanding water facilities loan. In this case, the Financing Authority would assign its rights to repayments from the City under the attached Loan Agreement to the new investor, Westamerica Bank. The proceeds received by the Financing Authority from the assignment to Westamerica Bank would be loaned to the City and used by the City to refinance the City's obligations to the California Communities Statewide Development Authority and to pay the City's expenses in connection with the refinancing. The attached Assignment Agreement between the Financing Authority and Westamerica Bank assigns the Financing Authority's rights to receive payments from the City under the Loan Agreement to the Bank, in exchange for payment to the Financing Authority of approximately $1,512,000. Attached are the following documents:

	Attachment
1) Financing Authority Resolution approving bylaws of the Authority	A
2) City Council Resolution approving Loan Agreement and assignment agreement	B
3) Financing Authority Resolution approving Loan Agreement and Assignment Agreement	C
4) Loan Agreement	D
5) Assignment Agreement	E
6) Financial Advisory Agreement	F
7) Special Legal Counsel Agreement	G

FISCAL IMPACT: *By refinancing, the City will save approximately $18,000 per year, or approximately $245,000 over 13.5 years, with total present value savings of approximately $185,000.*

RESOLUTION NO.

A RESOLUTION OF THE MORGAN HILL FINANCING AUTHORITY APPROVING BYLAWS OF THE AUTHORITY

RECITALS:

A. The City of Morgan Hill and the Morgan Hill Redevelopment Agency have heretofore executed a Joint Exercise of Powers Agreement, dated November 5, 2003, by and between the City and the Agency, which Agreement creates and establishes the Morgan Hill Financing Authority.

NOW THEREFORE, THE MORGAN HILL FINANCING AUTHORITY HEREBY FINDS, DETERMINES, RESOLVES AND ORDERS AS FOLLOWS:

Section 1. The Bylaws of the Morgan Hill Financing Authority, attached hereto as Exhibit A, are hereby approved and adopted as the official bylaws of the Authority.

PASSED AND ADOPTED by the Morgan Hill Financing Authority Commission at a Special Meeting held on the 19th Day of November, 2003, by the following vote:

AYES: COMMISSION MEMBERS:
NOES: COMMISSION MEMBERS:
ABSTAIN: COMMISSION MEMBERS:
ABSENT: COMMISSION MEMBERS:

_____
Dennis Kennedy, Financing Authority Commission President

ATTEST:

_____
Irma Torrez, City Clerk

CERTIFICATION

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the Morgan Hill Financing Authority Commission at a Special Meeting held on November 19, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

_____
IRMA TORREZ, City Clerk

BYLAWS
OF THE
MORGAN HILL FINANCING AUTHORITY

ARTICLE I - THE AUTHORITY

Section 1.1 Name of Authority. The name of the Authority shall be the "Morgan Hill Financing Authority."

Section 1.2 Seal of Authority. The Authority may have a seal. The seal of the Authority shall be in the form of a circle and shall bear the name of the Authority and the year of its organization.

Section 1.3 Office of Authority. The office of the Authority shall be at the offices of the City of Morgan Hill, 17555 Peak Avenue, Morgan Hill, California 95037, or at such other offices of the City as may be designated from time to time by the City Council of the City of Morgan Hill.

Section 1.4 Governing Body. The governing body of the Authority shall be known as the "Authority Commission of the Morgan Hill Financing Authority" (hereinafter the "Authority Commission") and shall be appointed in accordance with the provisions of Section 5 of that certain Joint Exercise of Powers Agreement dated November 5, 2003, as amended from time to time, between the City of Morgan Hill and the Morgan Hill Redevelopment Agency.

ARTICLE II - OFFICERS

Section 2.1 Officers. The officers of the Authority shall be a President, a Vice President, a Secretary, a Treasurer and a Chief Administrative Officer. An officer shall sign all contracts, deeds and other instruments made by the Authority.

Section 2.2 President; Vice President. The Mayor of the City of Morgan Hill shall serve as President of the Authority Commission. The Mayor Pro Tempore of the City of Morgan Hill shall serve as the Vice President of the Authority Commission. The President or, in the absence of the President, the Vice President shall preside at all meetings of the Authority Commission.

Section 2.3 Secretary. The City Clerk of the City of Morgan Hill shall serve as Secretary of the Authority. The Secretary shall keep the records of the Authority, shall act as Secretary of the meetings of the Authority Commission and record all votes, and shall keep a record of the proceedings of the Authority in the form of minutes, and shall perform all duties incident to the office of Secretary. The Secretary shall keep in safe custody the seal of the Authority and shall have power to affix such seal as required to all contracts and instruments authorized to be executed by the Authority Commission. The Secretary may attest to signatures of other officers of the Authority.

Section 2.4 Treasurer. The Treasurer of the Morgan Hill Redevelopment Agency shall serve as the Treasurer of the Authority and shall perform the duties assigned to the Treasurer under the Agreement.

Section 2.5 Chief Administrative Officer. The City Manager of the City of Morgan Hill shall serve as Chief Administrative Officer of the Authority. The Chief Administrative Officer shall conduct day-to-day administration of the Authority's business and affairs, subject to the direction of the Authority Commission.

Section 2.6 Additional Duties. The officers of the Authority shall perform such other duties and functions as may from time to time be required by the Authority Commission or these ByLaws or by resolution, rules and regulations or by motion of the Authority Commission. Any officer of the Authority may sign, with the countersignature of one other officer or deputy officer of the Authority, all orders and checks for the payment of money under the direction of the Authority.

Section 2.7 Assistants and Deputies; Additional Personnel. Whenever an officer of the City or the Agency is designated an officer of the Authority, the assistants and deputies of such officer from time to time shall also be, ex officio, officers of the Authority; and whenever a power is granted to, or a duty imposed upon, such officer, the power may be exercised, or the duty performed, by such assistant or deputy. The Authority Commission may from time to time employ such other personnel as it deems necessary to exercise its powers, duties and functions. The selection and compensation of such officers and other personnel shall be determined by the Authority Commission.

ARTICLE III - MEETINGS

Section 3.1 Regular Meetings. Regular meetings of the Authority Commission shall be held on the same day and at the same time and place as the first regular meeting of the City Council of the City of Morgan Hill in the month of June and in the month of December of each year.

Section 3.2 Applicability of Ralph M. Brown Act. Meetings of the Authority shall be held, notice given and the business of the Authority conducted, all as provided in the Ralph M. Brown Act, being California Government Code Sections 54950 et seq.

Section 3.3 Quorum. A majority of the Authority Commission shall constitute a quorum for the purpose of conducting business and exercising its powers and for all other purposes, but a smaller number may adjourn from time to time until a quorum is obtained. Action may be taken by the Authority Commission upon a vote of a majority of a quorum, unless a higher vote is required by law.

Section 3.4. Manner of Voting. The manner of voting on resolutions and on other matters shall be as prescribed by the President.

ARTICLE IV - AMENDMENTS

Section 4.1 Amendments to Bylaws. The Bylaws of the Authority may be amended by the Authority Commission by resolution.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AS TO FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND AN ASSIGNMENT AGREEMENT IN CONNECTION WITH THE REFINANCING OF BONDS AND AUTHORIZING CERTAIN OTHER MATTERS RELATING THERETO

WHEREAS, the City of Morgan Hill (the "City") has previously entered into a loan agreement by and between the City and the California Statewide Communities Development Authority ("Statewide Authority"), whereby the Statewide Authority issued its bonds and made a loan (the "1993 Loan") to the City to refinance the cost of a loan made to the City by the State of California (the "State") pursuant to the California Safe Drinking Water Bond Law of 1976 ("1980 Loan"); and

WHEREAS, the City has the power under and pursuant to Article 10 and Article 11 of Chapter 3 of Part 1 of Division 2 of the Government Code of the State (commencing with Section 53570) (the "Local Agency Refunding Law") to borrow money to refinance the 1993 Loan; and

WHEREAS, the City has determined to borrow amounts hereunder (the "Loan") from the Morgan Hill Financing Authority (the "Authority") for the object and purpose of refinancing the 1993 Loan, as provided herein, pursuant to the Local Agency Refunding Law and the Marks–Roos Local Bond Pooling Act of 1985, being Article 4, Chapter 5, Division 7, Title 1 of the Government Code of the State (the "Act"), and the City hereby finds and determines that there will be significant public benefits accruing from such borrowing, consisting of demonstrable savings in effective interest rates and financing costs associated with the Loan Agreement, hereinafter defined, pursuant to the Act; and

WHEREAS, the Authority is a joint powers authority duly organized and validly existing under the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State and is authorized pursuant to Article 4 to make secured or unsecured loans to the City in accordance with an agreement between the Authority and the City to refinance indebtedness incurred by the City in connection with public capital improvements undertaken and completed; and

WHEREAS, the Authority is authorized to enter into any agreement or contract, execute any instrument and perform any act or thing necessary, convenient, or desirable to carry out any power authorized by such Article 4.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY FIND RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. Recitals. The above recitals, and each of them, are true and correct.

Section 2. Loan Agreement. The Loan Agreement (the "Loan Agreement"), dated as of December 1, 2003, proposed to be entered into by and between the City and the Authority, in the form presented at this meeting and on file with the City Clerk is hereby approved. Subject to the Section 4, below, the Mayor and the City Manager, or either of them (each, an "Authorized Officer"), acting singly, is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Loan Agreement in substantially said form, with such changes therein as the Authorized Officer executing the same may approve (such approval to be conclusively evidenced by such Authorized Officer's execution and delivery thereof).

Section 3. Assignment Agreement. The Assignment Agreement (the "Assignment Agreement"), dated as of December 1, 2003, proposed to be entered into by and between the Authority and Westamerica Bank, in the form presented at this meeting and on file in the office of the City Clerk, is hereby approved.

Section 4. Terms of Loan Agreement. Each Authorized Officer, acting singly, is hereby authorized and directed to act on behalf of the Authority to establish and determine (i) the aggregate principal amount of the Loan, as that term is defined in the Loan Agreement, which amount shall not exceed $1,550,000, and (ii) the interest rate thereon, which shall not exceed 4.25 percent. The authorization and powers delegated to the Authorized Officers by Section 2 and 3, and by this Section 4 shall be valid for a period of 180 days from the date of adoption of this Resolution.

Section 5. Consultants. The City hereby retains (i) RBC Dain Rauscher to act as financial advisor to the City, (ii) Western Municipal Securities Corporation to act as placement agent for the City, and (iii) Richards, Watson & Gershon, A Professional Corporation, to act as special legal counsel to the City, all in connection with the transactions contemplated by this Resolution. The fees of each of the foregoing shall be paid from proceeds of the Loan and in accordance with consultant agreements now on file in the office of the Finance Director of the City.

Section 6. Other Acts. The Authorized Officers and all other officers of the Authority are hereby authorized and directed, jointly and severally, to do any and all things, to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the transactions contemplated by this Resolution, the Loan Agreement and the Assignment Agreement, and to pay the City's Expenses, as that term is defined in the Loan Agreement, and any of such actions previously taken by such officers and this City Council are hereby ratified and confirmed.

Section 7. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 19th Day of November, 2003, by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

_____
Dennis Kennedy, Mayor

ATTEST:

_____
Irma Torrez, City Clerk

❦ CERTIFICATION ❦

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on November 19, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____ _____
IRMA TORREZ, City Clerk

RESOLUTION NO.

A RESOLUTION OF THE MORGAN HILL FINANCING AUTHORITY APPROVING AS TO FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND AN ASSIGNMENT AGREEMENT IN CONNECTION WITH THE REFINANCING OF BONDS AND AUTHORIZING CERTAIN OTHER MATTERS RELATING THERETO

WHEREAS, the City of Morgan Hill (the "City") has previously entered into a loan agreement by and between the City and the California Statewide Communities Development Authority ("Statewide Authority"), whereby the Statewide Authority issued its bonds and made a loan (the "1993 Loan") to the City to refinance the cost of a loan made to the City by the State of California (the "State") pursuant to the California Safe Drinking Water Bond Law of 1976 ("1980 Loan"); and

WHEREAS, the City has the power under and pursuant to Article 10 and Article 11 of Chapter 3 of Part 1 of Division 2 of the Government Code of the State (commencing with Section 53570) (the "Local Agency Refunding Law") to borrow money to refinance the 1993 Loan; and

WHEREAS, the City has determined to borrow amounts hereunder (the "Loan") from the Morgan Hill Financing Authority (the "Authority") for the object and purpose of refinancing the 1993 Loan, as provided herein, pursuant to the Local Agency Refunding Law and the Marks–Roos Local Bond Pooling Act of 1985, being Article 4, Chapter 5, Division 7, Title 1 of the Government Code of the State (the "Act"), and the City hereby finds and determines that there will be significant public benefits accruing from such borrowing, consisting of demonstrable savings in effective interest rates and financing costs associated with the Loan Agreement, hereinafter defined, pursuant to the Act; and

WHEREAS, the Authority is a joint powers authority duly organized and validly existing under the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State and is authorized pursuant to Article 4 to make secured or unsecured loans to the City in accordance with an agreement between the Authority and the City to refinance indebtedness incurred by the City in connection with public capital improvements undertaken and completed; and

WHEREAS, the Authority is authorized to enter into any agreement or contract, execute any instrument and perform any act or thing necessary, convenient, or desirable to carry out any power authorized by such Article 4.

NOW, THEREFORE, THE MORGAN HILL FINANCING AUTHORITY DOES HEREBY FIND RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. Recitals. The above recitals, and each of them are true and correct.

Section 2. Loan Agreement. The Loan Agreement (the "Loan Agreement"), dated as of December 1, 2003, proposed to be entered into by and between the City and the Authority, in the form presented at this meeting and on file in the office of the Secretary of the Authority, is hereby approved. Subject to Section 4 below, each of the President, the Chief Administrative Officer, the Treasurer and the Secretary of the Authority, or any of them (each, an "Authorized Officer"), acting singly, is hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver the Loan in substantially said form, with such additions or changes as the Authorized Officer executing the same may approve (such approval to be conclusively evidenced by such Authorized Officer's execution and delivery thereof).

Section 3. Assignment Agreement. The Assignment Agreement (the "Assignment Agreement"), dated as of December 1, 2003, proposed to be entered into by and between the Authority and Westamerica Bank, in the form presented at this meeting and on file in the office of the Secretary of the Authority, is hereby approved. Each Authorized Officer, acting singly, is hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver the Assignment Agreement in substantially said form, with such changes therein as the Authorized Officer executing the same may approve (such approval to be conclusively evidenced by such Authorized Officer's execution and delivery thereof).

Section 4. Terms of Loan Agreement. Each Authorized Officer, acting singly, is hereby authorized and directed to act on behalf of the Authority to establish and determine (i) the aggregate principal amount of the Loan, as that term is defined in the Loan Agreement, which amount shall not exceed $1,550,000, and (ii) the interest rate thereon, which shall not exceed 4.25 percent. The authorization and powers delegated to the Authorized Officers by Sections 2 and 3, and by this Section 4 shall be valid for a period of 180 days from the date of adoption of this Resolution.

Section 5. Other Acts. The Authorized Officers and all other officers of the Authority are hereby authorized and directed, jointly and severally, to do any and all things, to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the transactions contemplated by this Resolution, the Loan Agreement and the Assignment Agreement, and to pay the City's Expenses, as that term is defined in the Loan Agreement, and any of such actions previously taken by such officers and this governing body are hereby ratified and confirmed.

Section 6. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the Morgan Hill Financing Authority Commission at a Special Meeting held on the 19th Day of November, 2003, by the following vote:

AYES: COMMISSION MEMBERS:
NOES: COMMISSION MEMBERS:
ABSTAIN: COMMISSION MEMBERS:
ABSENT: COMMISSION MEMBERS:

_____
Dennis Kennedy, Financing Authority Commission President

ATTEST:

_____
Irma Torrez, City Clerk

❦ **CERTIFICATION** ❦

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the Morgan Hill Financing Authority Commission at a Special Meeting held on November 19, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

_____
IRMA TORREZ, City Clerk

ASSIGNMENT OR OTHER TRANSFER OF THIS LOAN AGREEMENT IS SUBJECT TO THE RESTRICTIONS SET FORTH IN SECTION 2.5 HEREOF, AND THIS LOAN AGREEMENT MAY NOT BE ASSIGNED OR OTHERWISE TRANSFERRED WITHOUT THE EXPRESS WRITTEN CONSENT OF THE CITY OF MORGAN HILL. ASSIGNMENTS OR OTHER TRANSFERS ARE LIMITED TO CERTAIN PARTIES THAT QUALIFY UNDER THE REQUIREMENTS OF THE LOAN AGREEMENT, WHICH INCLUDE THE REQUIREMENT THAT SUCH PARTY CAN BEAR THE ECONOMIC RISK OF THE LOAN AGREEMENT AND HAS SUCH KNOWLEDGE AND EXPERIENCE IN BUSINESS AND FINANCIAL MATTERS, INCLUDING THE ANALYSIS OF A PARTICIPATION IN THE PURCHASE OF SIMILAR INVESTMENTS, AS TO BE CAPABLE OF EVALUATING THE MERITS AND RISKS OF AN INVESTMENT IN THE LOAN AGREEMENT. THE LOAN AGREEMENT HAS NOT BEEN REGISTERED WITH ANY FEDERAL OR STATE SECURITIES AGENCY OR COMMISSION.

LOAN AGREEMENT

THIS LOAN AGREEMENT, made and entered into as of December 1, 2003, by and between the CITY OF MORGAN HILL (the "City"), a municipal corporation duly organized and validly existing under the laws of the State of California (the "State"), and the MORGAN HILL FINANCING AUTHORITY, a public entity duly organized and validly existing under the laws of the State.

RECITALS:

WHEREAS, the City has previously entered into a loan agreement by and between the City and the California Statewide Communities Development Authority ("Statewide Authority"), whereby the Statewide Authority issued its bonds and made a loan (the "1993 Loan") to the City to refinance the cost of a loan made to the City by the State pursuant to the California Safe Drinking Water Bond Law of 1976 ("1980 Loan"); and

WHEREAS, the City has the power under and pursuant to Article 10 and Article 11 of Chapter 3 of Part 1 of Division 2 of the Government Code of the State (commencing with Section 53570) (the "Local Agency Refunding Law") to borrow money to refinance the 1993 Loan; and

WHEREAS, the City has determined to borrow amounts hereunder (the "Loan") for the object and purpose of refinancing the 1993 Loan, as provided herein, pursuant to the Local Agency Refunding Law and the Marks–Roos Local Bond Pooling Act of 1985, being Article 4, Chapter 5, Division 7, Title 1 of the Government Code of the State (the "Act"), and the City hereby finds and determines that there will be significant public benefits accruing from such borrowing, consisting of demonstrable savings in effective interest rates and financing costs associated with the Loan Agreement, hereinafter defined, pursuant to the Act; and

WHEREAS, the Authority is a joint powers authority duly organized and validly existing under the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State and is authorized pursuant to Article 4 to make secured or unsecured loans to the City in accordance with an agreement between the Authority and the City to refinance indebtedness incurred by the City in connection with public capital improvements undertaken and completed; and

WHEREAS, the Authority is authorized to enter into any agreement or contract, execute any instrument and perform any act or thing necessary, convenient, or desirable to carry out any power authorized by such Article 4; and

WHEREAS, in order to establish and declare the terms and conditions upon which the Loan is to be made and secured, the City and the Authority wish to enter into this Loan Agreement; and

WHEREAS, the City and the Authority have duly authorized the execution of this Agreement; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Loan Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Loan Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THESE PREMISES AND OF THE MUTUAL AGREEMENTS HEREIN CONTAINED AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

ARTICLE I

DEFINITIONS

SECTION 1.1. Definitions. Unless the context clearly otherwise requires or unless otherwise defined herein, the terms defined in this Section 1.1 shall, for all purposes of this Loan Agreement and any amendment hereof or supplement hereto and of any report or other document mentioned herein or therein have the meanings defined herein, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein.

"1980 Loan" means the loan or loans made to the City by the State pursuant to the California Safe Drinking Water Bond Law of 1976.

"1993 Loan" means the loan or loans made to the City by the California Statewide Communities Development Authority to refinance the 1980 Loan.

"Authority" means the Morgan Hill Financing Authority, a public entity duly organized and validly existing under and by virtue of the laws of the State.

"Bond Law" means the Marks – Roos Local Bond Pooling Act of 1985, being Article 4, Chapter 5, Division 7, Title 1 of the Government Code of the State of California.

"Business Day" means a day which is not a Saturday, Sunday or legal holiday on which banking institutions in the State are closed.

"City" means the City of Morgan Hill, a municipal corporation duly organized and existing under and by virtue of the laws of the State.

"Closing Date" means December 1, 2003.

"Code" means the Internal Revenue Code of 1986, as amended.

"Debt Service" means with respect to any indebtedness, for any Fiscal Year or other period, the sum of (i) the amount of interest payable on the Loan and all outstanding Parity Debt in such Loan Year, assuming that principal thereof is paid as scheduled and that any mandatory sinking fund payments are made as scheduled, and (ii) the amount of principal payable on the Loan and on all outstanding Parity Debt in such Loan Year, including any principal required to be prepaid by operation of mandatory sinking fund payments. "Debt Service" shall not include interest on indebtedness that is to be paid from amounts constituting capitalized interest.

"Event of Default" means any of the events described in Section 5.1.

"Expenses" means all costs of making the Loan and all administrative costs of the City that are charged directly or apportioned to the administration of the Loan, such as salaries and wages of employees, audits, overhead and taxes (if any), legal and financial consultant fees and expenses, amounts necessary to pay to the United States of America or otherwise to satisfy requirements of the Code in order to maintain the tax-exempt status of interest on the Loan, together with all other reasonable and necessary costs of the City or charges required to be paid by it to comply with the terms of the Loan Agreement or in connection with the acquisition and funding of the Loan.

"Fiscal Year" means any 12-month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive, or any other 12-month period selected and designated by the City as its official fiscal year period.

"Government Obligations" means and include any of the following securities: United States Treasury Obligations-State and Local Government Series (SLGS); United States Treasury bills, notes and bonds; and certificates, receipts or other obligations evidencing direct ownership of, or the right to receive, a specified portion of one or more interest payments or principal payments, or any combination thereof, to be made on any United States Treasury bill, note or bond.

"Independent Certified Accountant" means any certified public accountant or firm of certified public accountants duly licensed or registered or entitled to practice and practicing as such under the laws of the State, appointed by the City, and who, or each of whom is independent pursuant to the Statement on Auditing Standards No. 1 of the American Institute of Certified Public Accountants.

"Independent Consultant" means any consultant or firm of such consultants appointed by the City, and who, or each of whom: (i) is judged by the City to have experience in matters relating to the collection of Water Revenues or otherwise with respect to the financing of water projects; (ii) is in fact independent and not under the domination of the City; (iii) does not have any substantial interest, direct or indirect, in the City; and (iv) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make reports to the City.

"Loan" means the loan made by the Authority to the City pursuant to Section 2.1 hereof.

"Loan Agreement" means this Loan Agreement, as originally entered into or as amended or supplemented pursuant to the provisions hereof.

"Loan Payment Date" means June 1 and December 1 of each year, commencing on June 1, 2004 and ending on June 1, 2017.

"Local Agency Refunding Law" means Article 10 and Article 11 of Chapter 3 of Part 1 of Division 2 of the Government Code of the State.

"Maintenance and Operation Costs" means the reasonable and necessary costs paid or incurred by the City for maintaining and operating the Water System, determined in accordance with generally accepted accounting principles, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the Water System in good repair and working order, and including all administrative costs of the City that are charged directly or apportioned to the operation of the Water System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits and licenses to operate the Water System and insurance premiums, and including all other reasonable and necessary costs of the City or charges required to be paid by it to comply with the terms hereof; but excluding in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles.

"Maximum Annual Debt Service" means with respect to any indebtedness, as of the date of calculation, the greatest total Debt Service payable on the aggregate of such indebtedness in any Fiscal Year during the period commencing with the then current Fiscal Year and terminating with the Fiscal Year in which the last payments are due under such indebtedness.

"Net Water Revenues" means, for any Fiscal Year, all Water Revenues received by the City for such Fiscal Year less the Maintenance and Operations Costs for such Fiscal Year.

"Parity Debt" means any loans, bonds, notes, advances or indebtedness payable from and secured by a lien on the Water Revenues on a parity with the Loan, issued or incurred pursuant to and in accordance with the provisions of Section 2.6.

"Parity Debt Instrument" means any resolution, loan agreement, trust agreement or other instrument under which any Parity Debt is issued or incurred.

"Pledged Water Revenues" means, for any Fiscal Year, all Net Water Revenues for such Fiscal Year less all payments on Senior Debt for such Fiscal Year.

"Project" means any additions, betterments, extensions or improvements to the City's facilities designated by the City Council of the City as a Project.

"Report" means a document in writing signed by an Independent Consultant or an Independent Certified Public Accountant, in form and substance acceptable to the Authority, and including: (i) a statement that the person or firm making or giving such Report has read the pertinent provisions of this Loan Agreement to which such Report relates; (ii) a brief statement as to the nature and scope of the examination or investigation upon which the Report is based; and (iii) a statement that, in the opinion of such person or firm, sufficient examination or investigation was made as is necessary to enable said consultant to express an informed opinion with respect to the subject matter referred to in the Report.

"Senior Debt" means any loan, bond, note, advance, or other indebtedness of the City payable from and secured by Water Revenues and incurred pursuant to a Senior Debt Instrument.

"Senior Debt Instrument" means any resolution, loan agreement, trust agreement or other instrument entered into prior to the execution and delivery of this Loan Agreement authorizing indebtedness secured by a lien on the Water Revenues senior to the lien created by this Loan Agreement.

"State" means the State of California.

"Statewide Authority" means the California Statewide Communities Development Authority.

"Subordinate Debt" means any loan, bond, note, advance, or other indebtedness of the City payable from Water Revenues which is subordinate to the Loan.

"Subordinate Debt Instrument" means any resolution, loan agreement, trust agreement or other instrument authorizing any Subordinate Debt.

"Water Revenues" means all income, rents, rates, fees, charges and other moneys derived from the ownership or operation of the Water System, including, without limiting the generality of the foregoing, (i) all income, rents, rates, fees, charges, business interruption insurance proceeds or other moneys derived by the City from the sale, furnishing and supplying

of the water or other services, facilities, and commodities sold, furnished or supplied through the facilities of or in the conduct or operation of the business of the Water System, (ii) the earnings on and income derived from the investment of such income, rents, rates, fees, charges, or other moneys, including City reserves, (iii) the proceeds of any stand—by or water availability charges collected by the City, and (iv) the proceeds of any facilities fees or connection fees collected by the City, but excluding in all cases customers' deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the City and excluding any proceeds of taxes restricted by law to be used by the City to pay bonds hereafter issued.

"Water Service" means the water distribution service made available or provided by the Water System.

"Water System" means the entire water supply system owned by the City, including the portion thereof existing on the date hereof, and including all additions, betterments, extensions and improvements to such water system or any part thereof hereafter acquired or constructed.

"Written Certificate" or "Written Request" means a certificate or request, in writing, signed by the Mayor, City Manager, or Finance Director of the City or by any other officer of the City duly authorized by the City for that purpose.

SECTION 1.2. Rules of Construction. All references herein to "Sections," and other subdivisions are to the corresponding Sections or subdivisions of this Loan Agreement unless the context clearly otherwise requires. Words of any gender shall be deemed and construed to include all genders. The words "herein," hereof," "hereunder," and other words of similar import refer to this Loan Agreement as a whole and not to any particular Section or subdivision hereof.

ARTICLE II

THE LOAN; APPLICATION OF PROCEEDS; PARITY DEBT

SECTION 2.1. Authorization. The Authority hereby agrees to lend to the City, the amount of $1,512,490.55, for the prepayment of the 1993 Loan and the payment of the City's Expenses under and subject to the terms of this Loan Agreement, the Act and the Local Agency Refunding Law. This Loan Agreement constitutes a continuing agreement with the Authority to secure the full and final payment of the Loan, subject to the covenants, agreements, provisions and conditions herein contained.

SECTION 2.2. Terms of Loan. Payments of principal of and interest on the Loan shall be made on each Loan Payment Date in the amount set forth on Exhibit A, attached hereto, such payments to be credited first to interest, then to principal on the Loan. The interest rate on the Loan shall be 4.25 percent per annum.

Interest on each installment of principal of the Loan shall be calculated on the basis of a 360-day year of twelve 30-day months. Any installment of principal and interest that is

not paid when due shall continue to accrue interest at the rate of 4.25 percent per annum from and including the Loan Payment Date with respect to which such principal and interest is payable to but not including the date of actual payment.

Principal of and interest on the Loan shall be payable by the City to the Authority on each Loan Payment Date in lawful money of the United States of America. Payment of such principal and interest shall be secured as set forth in Article III of this Loan Agreement.

SECTION 2.3. Optional Prepayment of the Loan. The City shall have the right to prepay the unpaid principal installments of the Loan, in whole or in part, on the first day of any month, without penalty or premium.

The City shall give the Authority written notice of its intention to prepay the Loan at least 30 days (but not more than 60 days) prior to the date fixed for such prepayment, and shall transfer to the Authority the unpaid principal, together with interest accrued from the last Loan Payment Date, on or prior to the date fixed for such prepayment.

In the event the principal of the Loan shall be prepaid in part pursuant to this Section 2.3, the amount of the payment to be made by the City shall be modified to reflect such prepayment while maintaining the original final maturity of the Loan and substantially equal semiannual payments.

SECTION 2.4. Application of Proceeds. The proceeds of the Loan, net of the City's Expenses, shall be applied as follows:

(a) The Authority shall transfer or cause to be transferred to U.S. Bank National Association, Los Angeles, California, as Trustee under the 1993 Loan, the amount of $1,472,490.55 as prepayment of the 1993 Loan.

(b) The Authority shall pay the Expenses of the City of $40,000 as set forth in a Written Certificate of the Finance Director.

The City shall give notice to the Statewide Authority of the prepayment of the 1993 Loan. The Authority shall prepay the 1993 Loan and pay the City's Expenses.

SECTION 2.5. Assignment or Other Transfer of Loan Agreement. **ASSIGNMENT OR OTHER TRANSFER OF THIS LOAN AGREEMENT IS SUBJECT TO THE RESTRICTIONS SET FORTH IN THIS SECTION 2.5. THIS LOAN AGREEMENT, OR ANY PROVISION HEREOF, MAY NOT BE ASSIGNED OTHERWISE TRANSFERRED WITHOUT THE EXPRESS WRITTEN CONSENT OF THE CITY.** Neither this Loan Agreement, nor any provision hereof, may be assigned or otherwise transferred without the express written consent of the City, and the City shall not recognize any assignment or transfer, and such proposed assignment or transfer shall not be effective, without such express written consent with respect thereto. In connection with any proposed assignment or other transfer of this Loan Agreement, the City shall, as a condition to such consent, require delivery to it, in form and substance satisfactory to it, and the proposed

assignee or other transferee shall deliver to the City a letter in substantially the form attached hereto as Exhibit B and executed by the proposed assignee or transferee. All costs and expenses in connection with any requirements hereunder in connection with an assignment or transfer of this Loan Agreement shall be borne by the assignee, assignor, transferee or transferor, and shall not be an expense of the City or the Authority. Among other things, assignees or other transferees are limited to certain parties that are either (i) a bank, registered investment company, insurance company or other "accredited investor" as defined in Rule 501 of Regulation D of the United States Securities and Exchange Commission duly and validly organized under the laws of our jurisdiction of incorporation or organization, or (ii) a registered investment advisor purchasing or otherwise acquiring the Loan Agreement for inclusion in the portfolio of a registered investment company advised by such advisor and over whose transactions such advisor has discretionary power. In any event, the assignee or other transferee must have such knowledge and expertise in business and financial matters, including the analysis of a participation in the purchase of similar investments, as to be capable of evaluating the merits and risks of an investment in the Loan Agreement on the basis of the information and review of certain limited documents with respect to the Loan Agreement which are available from the City.

SECTION 2.6. Parity Debt. In addition to the Loan, the City may issue or incur Parity Debt in such principal amount as shall be determined by the City. The City may issue and deliver any Parity Debt subject to the following specific conditions, which are hereby made conditions precedent to the issuance and delivery of such Parity Debt issued under this Section 2.6: (i) no Event of Default hereunder, under any Senior Debt Instrument, under any Parity Debt Instrument or under any Subordinate Debt Instrument shall have occurred and be continuing, and the City shall otherwise be in compliance with all covenants set forth in this Loan Agreement; and (ii) the Net Water Revenues, together with any available property tax revenue of the City, received by the City in the most recent Fiscal Year for which audited financial statements are available, shall be at least equal to 120 percent of Maximum Annual Debt Service on Senior Debt, the Loan and Parity Debt which will be outstanding immediately following the issuance of such Parity Debt, as set forth in the Report of an Independent Certified Accountant delivered to the Authority.

ARTICLE III

PLEDGE OF PLEDGED WATER REVENUES

SECTION 3.1. Pledge of Pledged Water Revenues. Except as otherwise provided in Section 5.3, the Loan and all Parity Debt shall be equally secured by a first pledge of and lien on all of the Pledged Water Revenues, without preference or priority. The Pledged Water Revenues are hereby allocated in their entirety to the payment of the principal of and interest on the Loan and all Parity Debt, as provided herein. The Pledged Water Revenues shall be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the City. This Loan Agreement need not be recorded.

Neither the Loan nor this Loan Agreement is a debt of the Authority, the State of California or any of its political subdivisions (other than the City) and neither the Authority, the State nor any of its political subdivisions is liable thereon, nor in any event shall the Loan be payable out of any funds or properties other than Pledged Water Revenues of the City as provided herein. Neither the members of the City nor any persons executing this Loan Agreement are liable personally thereon by reason of its execution and delivery.

ARTICLE IV

COVENANTS OF THE CITY

SECTION 4.1. Punctual Payment. The City will punctually pay, or cause to be paid, the principal of and interest on the Loan in strict conformity with the terms of this Loan Agreement, and it will faithfully observe and perform all of the conditions, covenants and requirements of this Loan Agreement.

SECTION 4.2. Limitation on Additional Debt. The City hereby covenants that, until the Loan has been paid and discharged pursuant to Section 6.3, the City shall not issue any bonds, notes or other obligations, enter into any agreement or otherwise incur any loans, advances or indebtedness, which are in any case secured by a lien on all or any part of the Water Revenues that is superior to or on a parity with the lien established hereunder for the security of the Loan, excepting only Senior Debt and Parity Debt. Nothing herein is intended or shall be construed in any way to prohibit or impose any limitations upon the issuance or incurring by the City of Subordinate Debt or of loans, bonds, notes, advances or other indebtedness that is unsecured.

SECTION 4.3. Payment of Claims. The City from time to time will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies, which, if unpaid, might become liens or charges upon the properties owned by the City or upon the Pledged Water Revenues or any part thereof, or upon any funds in the hands of the Authority, or which might impair the security of the Loan. Nothing herein contained shall require the City to make any such payment so long as the City in good faith shall contest the validity of said claims.

SECTION 4.4. Books and Accounts; Financial Statements. (a) The City will keep proper books of record and accounts, separate from all other records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the Water Revenues. Such books of record and accounts shall at all times during business hours be subject to the inspection of the Authority or its representatives authorized in writing.

(b) The City will prepare and file with the Authority annually as soon as practicable, but in any event not later than 180 days after the close of each Fiscal Year, so long as the Loan is outstanding, an audited financial statement of the City relating to the Water Revenues for the preceding Fiscal Year, prepared by an Independent Certified Accountant, which audited financial statement shall include a statement as to the manner and extent to which

the City has complied with the provisions of this Loan Agreement. The City will furnish to the Authority, a copy of such audited financial statements.

(c) Simultaneously with the delivery of the annual audited financial statements, the City will deliver to the Authority a Written Certificate of the City stating the following:

(1) The number of Water System users as of the end of the Fiscal Year;

(2) Notification of the withdrawal of any Water System user comprising four percent or more of Water System sales measured in terms of revenue dollars since the last reporting date; and

(3) Any significant Water System plant retirements or expansions planned or undertaken since the last reporting date.

SECTION 4.5. Protection of Security and Rights. The City will preserve and protect the security of the Loan and any Parity Debt, the rights of the Authority with respect to the Loan and the rights of the owners of any Parity Debt with respect to such Parity Debt. From and after the Closing Date, the Loan shall be incontestable by the City.

SECTION 4.6. Payments of Taxes and Other Charges. The City will pay and discharge, or cause to be paid and discharged, all taxes, service charges, assessments and other governmental charges, or charges in lieu thereof, which may hereafter be lawfully imposed upon the City or the Water System when the same shall become due. Nothing herein contained shall require the City to make any such payment so long as the City in good faith shall contest the validity of said taxes, assessments or charges. The City will duly observe and conform with all valid requirements of any governmental authority relative to the Water System or any part thereof.

SECTION 4.7. Disposition of Property. The City shall not authorize the disposition of property constituting more than ten percent of the value of the Water System to one or more public bodies or other persons or entities whose property is exempt from taxation unless the City first obtains the written consent of the Authority and a Report of an Independent Consultant concluding that such disposition will not substantially adversely affect the security of the Loan or any Parity Debt or the rights of the Authority or the owners of such Parity Debt, respectively.

SECTION 4.8. Maintenance of Water Revenues. The City shall fix, prescribe and collect rates and charges for the Water Service which will be at least sufficient to yield during each Fiscal Year Net Water Revenues equal to 120 percent of all payments on Senior Debt, the Loan and Parity Debt as the same become due for such Fiscal Year.

SECTION 4.9. Tax Covenants. The City covenants that in order to maintain the exclusion from gross income for Federal income tax purposes of the interest on the Loan, and for

no other purpose, the City will satisfy, or take such actions as are necessary to cause to be satisfied, each provision of the Code necessary to maintain such exclusion.

(b) The City shall not use or permit the use of any proceeds of the Loan or any funds of the City, directly or indirectly, in any manner, and shall not take or omit to take any action that would cause this Loan Agreement to be treated as an obligation not described in Section 103(a) of the Code.

(c) The City covenants that no part of the Loan Agreement proceeds shall be used, directly or indirectly, to acquire any investment property which would cause the Loan Agreement to become an "arbitrage bond" within the meaning of Section 148 of the Code.

(d) By virtue of Subsection (e), below, the has no obligation with respect to the payment of rebate of excess investment earnings, if any, to the federal government.

(e) No Rebate; Qualified Tax-Exempt Obligation. The total aggregate principal amount of the Loan is the total amount of all "tax-exempt bonds" and all tax-exempt obligations (within the meaning of those under Sections 148(f)(4)(D) and 265(b)(3) of the Code, respectively) reasonably expected or anticipated to be issued by the City and all other subordinate entities of the City during this calendar year. The City is a governmental unit with general taxing powers. Neither the Loan Agreement, nor any portion thereof, is a "private activity bond" within the meaning of that term under Section 141 of the Code. Ninety-five percent or more of the net proceeds of the Loan are to be used for local governmental activities of the City. Thus, the total aggregate principal amount of such tax-exempt obligations issued or reasonably expected to be issued during this calendar year by the City, and any other subordinate entities of the City does not exceed $5,000,000. The City hereby designates the Loan Agreement a "qualified tax-exempt obligation" under Section 265(b)(3) of the Code.

(f) The City shall assure that the proceeds of the Loan Agreement are not used in a manner which would cause the Loan to become a "private activity bond" within the meaning of Section 141(a) of the Code, or which would meet the private loan financing test of Section 141(c) of the Code.

(g) The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Loan to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

(h) The City shall cause to be filed a Form 8038-G with the Internal Revenue Service.

SECTION 4.10. Operation of Water System. The City will, so long as the Loan is outstanding, maintain and operate the Water System in good condition, repair and working order, and will operate the Water System in an efficient and economical manner, and will pay all Maintenance and Operation Costs as they become due and payable. The City shall ensure that all activities undertaken by the City with respect to the operation of the Water System are undertaken and accomplished in conformity with all applicable requirements of law.

SECTION 4.11. Assumption of Loan. The obligations of the City under this Loan Agreement may not be assumed by another entity except in connection with a transfer of the entire Water System by the City and only upon delivery to the Authority of:

(a) An opinion of counsel experienced in matters relating to the tax-exempt status of interest on obligations of the same general type as the Loan to the effect that such transfer would not cause interest on the Loan to be included in gross income for federal income tax purposes;

(b) A Report of an Independent Consultant concluding that such transfer would not substantially adversely affect the security for the Loan or any Parity Debt or the rights of the Authority or the owners of such Parity Debt, respectively; and

(c) The written consent of the Authority.

SECTION 4.12. Further Assurances. The City will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Loan Agreement and for the better assuring and confirming unto the Authority of the rights and benefits provided in this Loan Agreement.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES

SECTION 5.1. Events of Default. The following events shall constitute Events of Default hereunder:

(a) Failure by the City to pay the principal of or interest or prepayment premium (if any) on Senior Debt, the Loan or any Parity Debt when and as the same shall become due and payable;

(b) Failure by the City to observe and perform any of the covenants, agreements or conditions on its part contained in this Loan Agreement, other than as referred to in the preceding Subsection (a), for a period of 60 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority; provided, however, that if the failure stated in such notice can be corrected, but not within such 60-day period, the Authority may consent to an extension of such time if corrective action is instituted by the City within such 60-day period and diligently pursued until such failure is corrected; and

(c) The filing by the City of a petition or answer seeking reorganization or arrangement under the Federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction shall approve a petition, filed with or without the consent of the City, seeking reorganization under the Federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for

the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the City or of the whole or any substantial part of its property.

If an Event of Default has occurred and is continuing, the Authority may exercise any remedies available to the Authority in law or at equity. Immediately upon becoming aware of the occurrence of an Event of Default, the Authority shall give notice of such Event of Default to the City by telephone, telecopier or other telecommunication device, promptly confirmed in writing.

SECTION 5.2. Remedies. Upon the occurrence of an Event of Default the Authority shall have the right:

(a) By mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the City or any member, officer or employee thereof, and to compel the City or any such member, officer or employee to perform and carry out its or his duties under law and the agreements and covenants required to be performed by it or him contained herein;

(b) By suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Authority or the City; or

(c) By suit in equity upon the happening of an Event of Default to require the City and its members, officers and employees to account as the trustee of an express trust.

SECTION 5.3. Application of Funds upon Default. All amounts received by the Authority pursuant to any right given or action taken by the Authority under provisions of this Loan Agreement, or otherwise held by the Authority upon the occurrence of an Event of Default, shall be applied by the Authority in the following order:

First, to the payment of the costs and expenses of the Authority, including reasonable compensation to their agents, attorneys and counsel; and

Second, to the payment of the whole amount of interest on and principal of the Loan and any Parity Debt then due and unpaid, with interest on overdue installments of principal and interest at the rate of 4.25 percent per annum; provided, however, that in the event such amounts shall be insufficient to pay in full the amount of such interest and principal, then such amounts shall be applied in the following order of priority:

(a) First, to the payment of all installments of interest on the Loan then due and unpaid, on a pro rata basis in the event that the available amounts are insufficient to pay all such interest in full,

(b) Second, to the payment of principal of all installments of the Loan then due and unpaid,

(c) Third, to the payment of interest on overdue installments of principal and interest, on a pro rata basis in the event that the available amounts are insufficient to pay all such interest in full.

SECTION 5.4. No Waiver. Nothing in this Article V of this Loan Agreement or in any other provision of this Loan Agreement shall affect or impair the obligation of the City, which is absolute and unconditional, to pay from the Pledged Water Revenues and other amounts pledged hereunder, the principal of and interest on the Loan to the Authority as herein provided, or affect or impair the right of action, which is also absolute and unconditional, of the Authority to institute suit to enforce such payment by virtue of the contract embodied in this Loan Agreement.

A waiver of any default by the Authority shall not affect any subsequent default or impair any rights or remedies on the subsequent default. No delay or omission of the Authority to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy conferred upon the Authority by this Article V of this Loan Agreement may be enforced and exercised from time to time and as often as shall be deemed expedient by the Authority.

If a suit, action or proceeding to enforce any right or exercise any remedy shall be abandoned or determined adversely to the Authority, the City and the Authority shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

SECTION 5.5. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Authority is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be exercised without exhausting and without regard to any other remedy conferred by law.

ARTICLE VI

MISCELLANEOUS

SECTION 6.1. Benefits Limited to Parties. Nothing in this Loan Agreement, expressed or implied, is intended to give to any person other than the City and the Authority, any right, remedy or claim under or by reason of this Loan Agreement. All covenants, stipulations, promises or agreements contained in this Loan Agreement by and on behalf of the City shall be for the sole and exclusive benefit of the Authority.

SECTION 6.2. Successor or Assign Is Deemed Included in All References to Predecessor. Whenever in this Loan Agreement the Authority is named or referred to, such reference shall be deemed to include the successors, assigns or other transferees thereof, and all the covenants and agreements in this Loan Agreement contained by or on behalf of the Authority shall bind and inure to the benefit of the respective successors, assigns or other transferees

thereof whether so expressed or not; provided, however, the foregoing provisions of this Section 6.2 of the Loan Agreement shall be effective only so long as the City has approved such assignment or other transfer pursuant to Section 2.5 hereof.

SECTION 6.3. Discharge of Loan Agreement. If the City shall pay and discharge the entire indebtedness on the Loan in any one or more of the following ways:

(a) By well and truly paying or causing to be paid the principal of and interest on the Loan, as and when the same become due and payable;

(b) By irrevocably depositing with the Authority, at or before maturity, cash in an amount which is fully sufficient to pay all principal of and interest on the Loan; or

(c) By irrevocably depositing with the Authority or a fiduciary, in trust, Government Obligations in such amount as an Independent Certified Public Accountant shall determine in a written report filed with the Authority (upon which report the Authority may conclusively rely) will, together with the interest to accrue thereon and available moneys then on deposit in the funds and accounts established pursuant this Loan Agreement, be fully sufficient to pay and discharge the indebtedness on the Loan (including all principal and interest) at or before maturity;

then, at the election of the City, but only if all other amounts then due and payable hereunder shall have been paid or provision for their payment made, the pledge of and lien upon the Pledged Water Revenues and other funds provided for in this Loan Agreement and all other obligations of the Authority and the City under this Loan Agreement with respect to the Loan shall cease and terminate, except only (a) the obligation of the City to pay or cause to be paid to the Authority, all sums due with respect to the Loan and (b) the obligations of the City, pursuant to Section 4.09 hereof. Notice of such election shall be filed with the Authority.

Any funds thereafter held by the Authority hereunder, which are not required for said purpose, shall be paid over to the City.

SECTION 6.4. Amendment. This Loan Agreement may be amended by the parties hereto.

SECTION 6.5. Waiver of Personal Liability. No member, officer, agent or employee of the City shall be individually or personally liable for the payment of the principal of or the interest on the Loan; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

SECTION 6.6. Payment on Business Days. Whenever in this Loan Agreement any amount is required to be paid on a day that is not a Business Day, such payment shall be required to be made on the Business Day immediately following such day and no further interest shall accrue.

SECTION 6.7. Notices. All written notices to be given under this Loan Agreement may be given by first class mail or personal delivery to the party entitled thereto at its current address, or at such address as the party may provide to the other party in writing from time to time. Notice will be effective either (i) upon transmission by facsimile transmission or other form of telecommunication, (ii) upon actual receipt after deposit in the United States mail, postage prepaid, or (iii) in any other case, upon actual receipt. The City and the Authority may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder, namely:

If to the Authority: Morgan Hill Financing Authority
17555 Peak Avenue
Morgan Hill, California 95037
Attention: Chairman

If to the City: City of Morgan Hill
17555 Peak Avenue
Morgan Hill, California 95037
Attention: City Manager

SECTION 6.8. Partial Invalidity. If any portion of this Loan Agreement shall for any reason be held illegal, invalid or unenforceable, such holding shall not affect the validity and enforceability of the remaining portions of this Loan Agreement.

SECTION 6.9. Governing Law. This Loan Agreement shall be construed and governed in accordance with the laws of the State.

IN WITNESS WHEREOF, the parties hereto have executed and attested this Loan Agreement by their respective officers thereunto duly authorized as of the day and year first above written.

CITY OF MORGAN HILL

By _____
J. Edward Tewes
City Manager

ATTEST:

_____
Irma Torrez
City Clerk

MORGAN HILL FINANCING AUTHORITY

By _____
J. Edward Tewes
Chief Administrative Officer

ATTEST:

_____
Irma Torrez
Secretary

EXHIBIT A

Date	Interest Payable	Principal Payable	Total Payment
June 1, 2004	32,140.43	42,053.57	74,194.00
December 1, 2004	31,246.79	42,947.21	74,194.00
June 1, 2005	30,334.16	43,859.84	74,194.00
December 1, 2005	29,402.14	44,791.86	74,194.00
June 1, 2006	28,450.31	45,743.69	74,194.00
December 1, 2006	27,478.26	46,715.74	74,194.00
June 1, 2007	26,485.55	47,708.45	74,194.00
December 1, 2007	25,471.74	48,722.25	74,194.00
June 1, 2008	24,436.39	49,757.60	74,194.00
December 1, 2008	23,379.04	50,814.95	74,194.00
June 1, 2009	22,299.23	51,894.77	74,194.00
December 1, 2009	21,196.46	52,997.53	74,194.00
June 1, 2010	20,070.27	54,123.73	74,194.00
December 1, 2010	18,920.14	55,273.86	74,194.00
June 1, 2011	17,745.57	56,448.43	74,194.00
December 1, 2011	16,546.04	57,647.96	74,194.00
June 1, 2012	15,321.02	58,872.98	74,194.00
December 1, 2012	14,069.97	60,124.03	74,194.00
June 1, 2013	12,792.33	61,401.66	74,194.00
December 1, 2013	11,487.55	62,706.45	74,194.00

Date	Interest Payable	Principal Payable	Total Payment
June 1, 2014	10,155.04	64,038.96	74,194.00
December 1, 2014	8,794.21	65,399.79	74,194.00
June 1, 2015	7,404.46	66,789.53	74,194.00
December 1, 2015	5,985.18	68,208.81	74,194.00
June 1, 2016	4,535.75	69,658.25	74,194.00
December 1, 2016	3,055.51	71,138.49	74,194.00
June 1, 2017	1,543.81	72,650.19	74,194.00

EXHIBIT B

FORM OF LETTER OF ACCREDITED INVESTOR

Date: _____

City of Morgan Hill
17555 Peak Avenue
Morgan Hill, California 95037

Morgan Hill Financing Authority
17555 Peak Avenue
Morgan Hill, California 95037

Reference: Assignment or other Transfer of Loan Agreement dated December 1, 2003, between City of Morgan Hill and Morgan Hill Financing Authority

Ladies and Gentlemen:

Pursuant to _____, the undersigned intends to take an assignment of that certain Loan Agreement dated December 1, 2003, between the City of Morgan Hill and the Morgan Hill Financing Authority, a copy of which is also attached to this letter.

The assignment or other transfer of such Loan Agreement is subject to the restrictions set forth in the legend on the first page of the Loan Agreement and in Section 2.5 thereof. The Loan Agreement may not be assigned or otherwise transferred without the express written consent of the City of Morgan Hill, and the City will not recognize any assignment or transfer, and any such proposed assignment or transfer will not be effective, without such express written consent. The Loan Agreement requires that in connection with any proposed assignment or transfer of the Loan Agreement, the City must, as a condition to such consent, require delivery to it, in form and substance satisfactory to it, and the proposed transferee must deliver to the City a letter executed by the proposed assignee or transferee. This letter is given with respect to such requirement.

In connection with the proposed assignment or transfer of the Loan Agreement to the undersigned, the undersigned hereby certifies as follows:

1. We understand that we will not receive from the City, the Morgan Hill Financing Authority, their governing bodies, or any of their officers, employees, agents, legal counsel or advisors, or any other party, any information with respect to the use of the proceeds of the Loan Agreement, the provisions for payment thereof, the security therefor or the sufficiency of such

provisions for payment thereof and security therefor, the risks of investment therein, except information that (i) is contained in the Loan Agreement, a copy of which has been provided to us and reviewed by us prior to our taking an assignment or other transfer of the Loan Agreement, and (ii) has been specifically requested by us in writing from the City, the Authority, their governing bodies, or any of their officers, employees, agents, legal counsel or advisors, or any other party, which has been provided to us and reviewed by us prior to our taking an assignment or other transfer of the Loan Agreement. We specifically acknowledge that we have requested no information from the City or the Authority, and that none of them have provided us with any documentation other than the Loan Agreement.

2. We acknowledge that neither the City nor the Authority has prepared any offering document with respect to the Loan Agreement.

3. Neither the City, the Authority, their governing bodies, their members or any of their officers, employees, agents, legal counsel or advisors, or any other party, will have any responsibility to us for the accuracy or completeness of information obtained by us from any source regarding the Loan Agreement, the provisions for payment thereof, or the sufficiency of any security therefor. We acknowledge that, as between us and all of such parties: (i) we have assumed responsibility for obtaining such information and making such review as we have deemed necessary or desirable in connection with our decision to take an assignment or other transfer of the Loan Agreement, and (ii) with the investigation made by us (including specifically our investigation of the City and the Authority) prior to our taking an assignment or other transfer of the Loan Agreement, we have conducted a review that we have deemed necessary or desirable in connection with our decision to take such assignment or other transfer.

4. We have been offered copies of or full access to all documents relating to the delivery and assignment or other transfer of the Loan Agreement and all records, reports, cash flow statements and other information concerning the Loan Agreement and pertinent to the source of payment for the Loan Agreement which we, as a reasonable investor, have requested and to which we, as a reasonable investor, would attach significance in making investment decisions, including, without limitation, information as to the City and its payment obligation under the Loan Agreement. We have based our decision to invest in the Loan Agreement solely on our own investigation, including, without limitation, our review of such documents, records, reports, cash flow statements and other information concerning the Loan Agreement. We are not relying on any information that is not in written form.

5. We are either (i) a bank, registered investment company, insurance company or other "accredited investor" as defined in Rule 501 of Regulation D of the United States Securities and Exchange Commission duly and validly organized under the laws of our jurisdiction of incorporation or organization, (ii) described in paragraph 6, below, or (iii) a natural person with (a) a net worth, or joint net worth with my spouse, of at least $1,000,000, or (b) an individual income in excess of $200,000 in each of the two most recent years or joint income with my spouse in excess of $300,000 in each of those years and with a reasonable expectation of reaching the same income level in the current year. If described in this paragraph 5, we can bear the economic risk of taking an assignment or other transfer and have such

knowledge and experience in business and financial matters, including the analysis of a participation in the purchase of similar investments, as to be capable of evaluating the merits and risks of an investment in the Loan Agreement on the basis of the information and review described in this letter.

6. If not described in paragraph 5, we are a registered investment advisor taking an assignment or other transfer for inclusion in the portfolio of a registered investment company advised by us and over whose transactions we have discretionary power. If described in this paragraph 6, we have such knowledge and expertise in business and financial matters, including the analysis of a participation in the purchase of similar investments, as to be capable of evaluating the merits and risks of an investment in the Loan Agreement on the basis of the information and review described in this letter, and the investment company for which we are purchasing the Loan Agreement is duly and validly organized under the laws of its jurisdiction of incorporation or organization and can bear the economic risk of the Loan Agreement.

7. We are taking an assignment or other transfer of the Loan Agreement for our own account (except as described in paragraph 6, in which instance it has been assigned or transferred for the account of one registered investment company managed by us) for investment and not with a view to the distribution, transfer or resale thereof, provided that the disposition of the Loan Agreement (subject to the express written consent of the City) shall at all times be within our sole control.

8. We (or as described in paragraph 6, the registered investment advisor) are duly and legally authorized to take an assignment or other transfer of obligations such as the Loan Agreement.

9. We have not and will not rely on any action taken by or information provided by or on behalf of the City or the Authority, including, but not limited to, delivery of the Loan Agreement, as evidence that the Loan Agreement complies with the provisions of any legislation.

10. We understand that the Loan Agreement has not been registered with any federal or state securities agency or commission.

11. We have satisfied ourselves that the Loan Agreement is a lawful investment for this organization under all applicable laws.

12. We have carefully read the Loan Agreement in its entirety and understand the risks associated with an investment in the Loan Agreement.

13. We acknowledge that no credit rating has been sought or obtained with respect to the Loan Agreement, and we acknowledge that the Loan Agreement is a speculative investment and that there is a degree of risk in such investment.

14. We acknowledge that we have read the form of approving opinion of Richards, Watson & Gershon, A Professional Corporation regarding the Loan Agreement.

15. We understand that the assignment or other transfer of the Loan Agreement is subject to the requirements of Section 2.5 thereof, including the requirement that any assignee or transferee execute an investment letter substantially similar to this letter.

16. We understand that any assignee or other transferees must be a person or entity describe din paragraph 5 or 6 of this letter.

17. The undersigned further understands that the Loan Agreement requires that all costs and expenses in connection with any certifications required under the Loan Agreement in connection with an assignment or transfer must be borne by the assignee, assignor, transferee or transferor, and will not be an expense of the City or the Authority.

The foregoing representations shall survive the execution and delivery to us of the Loan Agreement and the instruments and documents contemplated thereby.

Very truly yours,

By:_____
Name:_____
Title:_____

ASSIGNMENT AGREEMENT

This Assignment Agreement is made and entered into as of December 1, 2003, by and between the MORGAN HILL FINANCING AUTHORITY, a public entity duly organized and validly existing under and by virtue of the laws of the State of California (the "Authority") and WESTAMERICA BANK, a California corporation, duly organized and existing under and by virtue of the laws of the United States (the "Bank").

RECITALS:

A. WHEREAS, the Authority and the City of Morgan Hill (the "City") have entered into a Loan Agreement dated as of December 1, 2003 (the "Loan Agreement"), whereby the Authority provides the Loan (as that term is defined in the Loan Agreement) to the City to refinance a loan made to the City by the California Statewide Communities Development Authority ("Statewide Authority"); and

B. WHEREAS, under and pursuant to the Loan Agreement, the City is obligated to pay the principal of and interest on the Loan to the Authority; and

C. WHEREAS, the Authority desires to assign to the Bank, without recourse, all of the Authority's rights under the Loan Agreement, including its right to receive the Loan payments scheduled or required to be paid by the City thereunder; and

D. WHEREAS, under Section 2.5 of the Loan Agreement, the City has provided its express written consent to the assignment of the Loan Agreement to the Bank pursuant to this Assignment Agreement; and

E. WHEREAS, The Authority has determined that all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Assignment Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Assignment Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

SECTION 1. Assignment.

In consideration for the payment to the Authority by the Bank of the amount of $1,512,490.55, on or before December 1, 2003, at noon, in immediately available funds, the Authority does hereby sell, assign and transfer to the Bank without recourse all of its rights, title, and interest in the Loan Agreement, including the right to receive all payments of principal and interest from the City on the Loan under the Loan Agreement (including the right of the Authority to receive notices thereunder), together with any and all of the other rights of the

Authority under the Loan Agreement as may be necessary to enforce payment of principal and interest on the Loan when due or otherwise to protect the interests of the Bank. Such payment of $1,512,490.55 shall be wired as follows: (i) the amount of $1,472,490.55 shall be wired to U.S. Bank National Association as Trustee under the 1993 Loan (as that term is defined in the Loan Agreement); and (ii) the amount of $40,000 shall be wired to the City, all in accordance with the Written Certificate of the Finance Director of the City.

SECTION 2. Acceptance.

The Bank hereby accepts the foregoing assignment for the purpose of securing the right assigned to it to receive all such payments of principal and interest on the Loan from the City under the Loan Agreement and the other rights assigned to it, subject to the terms and provisions of the Loan Agreement.

SECTION 3. Conditions.

This Assignment Agreement shall confer no rights or impose no obligations upon the Authority beyond those expressly provided in this Assignment Agreement.

SECTION 4. Counterparts.

This Assignment Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment Agreement by their officers thereunto duly authorized as of the day and year first written above.

MORGAN HILL FINANCING AUTHORITY

By_____
J. Edward Tewes
Chief Administrative Officer

ATTEST:

By_____
Irma Torrez
Secretary

WESTAMERICA BANK, A CALIFORNIA CORPORATION

By_____
Donald P. Anderson
Vice President

Pursuant to Section 2.5 of that certain Loan Agreement dated as of December 1, 2003, between the City of Morgan Hill (the "City") and the Morgan Hill Financing Authority (the "Authority") the City hereby provides its express written consent to the assignment by the Authority of such Loan Agreement to Westamerica Bank under and pursuant to this Assignment Agreement.

CITY OF MORGAN HILL

By _____
J. Edward Tewes
City Manager

FINANCIAL ADVISOR AGREEMENT
RBC DAIN RAUSCHER INC.

THIS AGREEMENT is made this _____ day of _____, 20___, by the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and RBC DAIN RAUSCHER INC., California corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to City Council approval on _____.

2. CONSULTANT is qualified by virtue of experience, training, education, and expertise to accomplish these services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement**. This Agreement relates to the private placement refunding of the City's outstanding debt obligation known as the California Statewide Communities Development Authority, Water Revenue Refunding Bonds, Senior Series 1993A (City of Morgan Hill Loan) ("OBLIGATION"), and covers services rendered from the date of this Agreement until the closing of the OBLIGATION.

2. **Services to be Provided**. The services to be performed by CONSULTANT shall consist of those services as provided in Appendix A herein.

3. **Compensation**. CONSULTANT shall receive a fee of $10,000.00 for services rendered under this Agreement, which fee shall be inclusive of any expenses incurred by CONSULTANT. The fee is contingent upon the closing of the OBLIGATION and will be paid from proceeds of the OBLIGATION at the time of closing.

4. **Termination**. CITY and CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice.

5. **Insurance Requirements**.

   Commencement of Work. CONSULTANT shall not commence work under this Agreement until it has obtained CITY approved insurance. For a general liability policy, CONSULTANT shall provide CITY, prior to commencement of work, with a separate endorsement which states that the policy contains the following language:

- The CITY, its elected officials, officers, employees, agents and representatives are named as additional insureds; and,

- the insurer waives the right of subrogation against CITY and CITY'S elected officials, officers, employees, agents, and representatives; and,

- insurance shall be primary non-contributing.

CONSULTANT shall furnish CITY with copies of all policies or certificates subject to this Agreement, whether new or modified, promptly upon receipt. No policy subject to this Agreement shall be cancelled or materially changed except after thirty (30) days' notice by the insurer to CITY by certified mail.

Workers Compensation Insurance. CONSULTANT and all subcontractors shall maintain Worker's Compensation Insurance, if applicable.

Insurance Types and Amounts. CONSULTANT shall maintain general commercial liability insurance against claims and liabilities for personal injury, death, or property damage, providing protection of at least $1,000,000 for bodily injury or death to any one person for any one accident or occurrence and at least $1,000,000 for property damage. CONSULTANT shall also maintain professional liability insurance in an amount of $1,000,000 per claim.

Acceptability of Insurers. All insurance required by this Agreement shall be carried only by responsible insurance companies licensed to do business in California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

Provision of Agreement to Insurers. CONSULTANT represents and warrants that they have provided a copy of this Agreement to their respective insurers, and the insurers are aware of all obligations pertaining to CONSULTANT as stated in this Agreement.

6. **Non-Liability of Officials and Employees of the CITY**. No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

7. **Non-Discrimination**. CONSULTANT covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, or ancestry, in any activity pursuant to this Agreement.

8. **Independent Contractor**. It is agreed to that CONSULTANT shall act and be an independent contractor and not an agent or employee of CITY.

9. **Compliance with Law**. CONSULTANT shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

10. **Ownership of Work Product**. All documents or other information developed or received by CONSULTANT for work performed under this agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

11. **Conflict of Interest and Reporting**. CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

12. **Notices**. All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of CONSULTANT is as follows:

_____

_____

_____

Address of CITY is as follows:

City Department Director City of Morgan Hill 17555 Peak Avenue Morgan Hill, CA 95037	with a copy to: City Clerk 17555 Peak Avenue Morgan Hill, CA 95037

13. **CONSULTANT'S Proposal**. This Agreement shall include CONSULTANT'S proposal or bid, which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

14. **Familiarity with Work**. By executing this Agreement, CONSULTANT warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.

15. **Time of Essence**. Time is of the essence in the performance of this Agreement.

16. **Limitations Upon Subcontracting and Assignment**. Neither this Agreement or any portion shall be assigned by CONSULTANT, without prior written consent of CITY.

17. **Authority to Execute**. The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

18. **Indemnification**.

    All actions taken and all recommendations made by CONSULTANT in performing its duties under this Agreement will be based on its best professional judgment with the goal of obtaining the most favorable terms for the CITY and is not a guarantee of result. However, for claims arising from CONSULTANT'S professional acts or omissions, CONSULTANT agrees to protect, defend and hold harmless the CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including reasonable attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, to the extent arising out of the negligent performance and/or willful acts or omission of CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT; provided that such losses, claims, damages or liabilities are not attributable to the CITY'S own negligence or misconduct in carrying out its duties.

    For any other claim arising from any other act or omission, performance or non-performance by CONSULTANT under this Agreement, CONSULTANT agrees to protect, defend and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including reasonable attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, to the extent arising out of this Agreement by CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT.

    The only exception to CONSULTANT'S above-named responsibilities to protect, defend, and hold harmless CITY is due to the sole negligence of CITY as adjudged by a court of competent jurisdiction. CONSULTANT shall bear any initial burden of protection, defense, and hold harmless until such court judgment is rendered.

    This Agreement shall apply to all liability, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.

19. **Modification**. This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This

Agreement may be modified or provisions waived only by subsequent mutual written agreement executed by CITY and CONSULTANT.

20. **California Law**. This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the Santa Clara County Superior Court.

21. **Interpretation**. This Agreement shall be interpreted as though prepared by both parties.

22. **Preservation of Agreement**. Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

ATTEST:

City Clerk
Date: _____

APPROVED:

Risk Manager
Date: _____

APPROVED AS TO FORM:

City Attorney
Date: _____

THE CITY OF MORGAN HILL

City Manager
Date _____

"CONSULTANT"

By:
Date: _____

APPENDIX A

FINANCIAL ADVISOR SCOPE OF SERVICES

RBC Dain Rauscher Inc. proposes to act as financial advisor to the City of Morgan Hill, California (the "City") on the private placement refunding of the City's outstanding debt obligation known as the California Statewide Communities Development Authority, Water Revenue Refunding Bonds, Senior Series 1993A (City of Morgan Hill Loan) (the "Obligation").

To fulfill these duties as financial advisor, we agree to perform the following:

(a) We will conduct a review of the financial resources of the City's water utility enterprise fund to determine the extent of the borrowing capacity of the City. This review will include an analysis of the existing debt structure in relation to sources of income projected by the City that may be pledged to secure payment of the Obligation.

(b) On the basis of the information and estimates developed through our review described above and other information that we consider appropriate, we will submit recommendations with respect to a plan of finance for the issuance of the Obligation that will include (1) the date of issuance, (2) interest rate structure (fixed or variable), (3) interest payment dates, (4) a schedule of maturities, (5) early redemption provisions, (6) security provisions and covenants, and (7) other matters that we consider appropriate to improve the marketability of the Obligation.

(c) In order to assist you in selecting a date for the sale of the Obligation, we will advise you of current conditions in the relevant debt market, upcoming bond issues, and other general information and economic data which might reasonably be expected to influence interest rates or bidding conditions.

(d) We understand that you have retained a recognized municipal bond counsel firm, whose fees will be paid from proceeds of the Obligation, who will prepare the proceedings, who will provide advice concerning the steps necessary to be taken to issue the Obligation, and who will issue an opinion (in a form standard for this particular type of financing) approving the legality of the Obligation and tax exemption of the interest paid thereon. In addition, bond counsel will issue an opinion to the effect that by virtue of the private placement nature of the Obligation, no disclosure document will be necessary, but that instead, the purchaser of the Obligation will provide a "Traveling Letter of Accredited Investor", prepared by Bond Counsel, certifying that it is an "accredited investor"

as defined in Rule 501 of Regulation D of the United States Securities and Exchange Commission. We will maintain liaison with bond counsel and other attorneys to the transaction and shall assist in all financial advisory aspects involved in the preparation of appropriate legal proceedings and documents.

(e) We will attend any and all meetings of the City Council of the City, its staff, representatives or committees as requested at all times when we may be of assistance or service and the subject of the financing is to be discussed.

CONSULTANT AGREEMENT
NAME OF CONSULTANT

THIS AGREEMENT is made this _____ day of _____, 2003, by the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Richards, Watson & Gershon, A Professional Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to City Council approval on November 19, 2003.

2. CONSULTANT is qualified by virtue of experience, training, education, and expertise to accomplish these services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement**. This Agreement shall cover services rendered from October 1, 2003, until December 1, 2003.

2. **Services to be Provided**. The services to be performed by CONSULTANT shall consist of special legal counsel services in connection with a loan to be made by Westamerica Bank to effect a refinancing of a 1993 loan agreement between the City and the California Statewide Communities Development Authority.

3. **Compensation**. CONSULTANT shall be compensated as follows:

3.1. Amount. Compensation under this Agreement shall not exceed $20,000 and shall be contingent upon closing of the loan.

3.2. Payment. For work under this Agreement, payment shall be made per invoice.

3.3. Records of Expenses. CONSULTANT shall keep accurate records of payroll, travel, and expenses. These records will be made available to CITY.

3.4. Termination. CITY and CONSULTANT shall have the right to terminate this Agreement, without cause, by giving fifteen (15) days' written notice.

4. **Insurance Requirements**.

4.1. Commencement of Work. CONSULTANT shall not commence work under this Agreement until it has obtained CITY approved insurance. For general liability and automobile insurance policies, CONSULTANT shall provide CITY, prior to commencement of work, with a separate endorsement which states that the policy contains the following language:

- The CITY, its elected officials, officers, employees, agents and representatives are named as additional insureds; and,

- the insurer waives the right of subrogation against CITY and CITY'S elected officials, officers, employees, agents, and representatives; and,

- insurance shall be primary non-contributing.

CONSULTANT shall furnish CITY with copies of all policies or certificates subject to this Agreement, whether new or modified, promptly upon receipt. No policy subject to this Agreement shall be cancelled or materially changed except after thirty (30) days' notice by the insurer to CITY by certified mail.

4.2. Workers Compensation Insurance. CONSULTANT and all subcontractors shall maintain Worker's Compensation Insurance, if applicable.

4.3. Insurance Types and Amounts. CONSULTANT shall maintain general commercial liability and automobile insurance against claims and liabilities for personal injury, death, or property damage, providing protection of at least $1,000,000 for bodily injury or death to any one person for any one accident or occurrence and at least $1,000,000 for property damage. CONSULTANT shall also maintain professional liability insurance in an amount of $1,000,000 per claim.

4.4. Acceptability of Insurers. All insurance required by this Agreement shall be carried only by responsible insurance companies licensed to do business in California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

4.5. Provision of Agreement to Insurers. CONSULTANT represents and warrants that they have provided a copy of this Agreement to their respective insurers, and the insurers are aware of all obligations pertaining to CONSULTANT as stated in this Agreement.

5. **Non-Liability of Officials and Employees of the CITY**. No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

6. **Non-Discrimination**. CONSULTANT covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, or ancestry, in any activity pursuant to this Agreement.

7. **Independent Contractor**. It is agreed to that CONSULTANT shall act and be an independent contractor and not an agent or employee of CITY.

8. **Compliance with Law**. CONSULTANT shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

9. **Ownership of Work Product**. All documents or other information developed or received by CONSULTANT for work performed under this agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

10. **Conflict of Interest and Reporting**. CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

11. **Notices**. All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of CONSULTANT is as follows:
Richards, Watson & Gershon
355 South Grand Avenue, Suite 4000
Los Angeles, California 90071

Address of CITY is as follows:

Finance Director	with a copy to:
City of Morgan Hill	City Clerk
17555 Peak Avenue	17555 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

12. **CONSULTANT'S Proposal**. This Agreement shall include CONSULTANT'S proposal or bid, which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

13. **Licenses, Permits, and Fees**. CONSULTANT shall obtain a City of Morgan Hill Business License, all permits, and licenses as may be required by this Agreement.

14. **Familiarity with Work**. By executing this Agreement, CONSULTANT warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.

15. **Time of Essence**. Time is of the essence in the performance of this Agreement.

16. **Limitations Upon Subcontracting and Assignment**. Neither this Agreement or any portion shall be assigned by CONSULTANT, without prior written consent of CITY.

17. **Authority to Execute**. The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

18. **Indemnification**.

18.1. For claims arising from CONSULTANT'S professional acts or omissions, CONSULTANT agrees to protect, defend and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including reasonable attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, to the extent arising out of the negligence performance and/or willful acts or omission of CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT.

18.2. For any other claim arising from any other act or omission, performance or non-performance by CONSULTANT under this Agreement, CONSULTANT agrees to protect, defend and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including reasonable attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, to the extent arising out of this Agreement by CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT.

18.3. The only exception to CONSULTANT'S above-named responsibilities to protect, defend, and hold harmless CITY is due to the sole negligence of CITY as adjudged by a court of competent jurisdiction. CONSULTANT shall bear any initial burden of protection, defense, and hold harmless until such court judgment is rendered.

18.4. This agreement shall apply to all liability, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.

19. **Modification**. This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by subsequent mutual written agreement executed by CITY and CONSULTANT.

20. **California Law**. This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the Santa Clara County Superior Court.

21. **Interpretation**. This Agreement shall be interpreted as though prepared by both parties.

22. **Preservation of Agreement**. Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

ATTEST:

City Clerk

Date:

THE CITY OF MORGAN HILL

City Manager

Date:

APPROVED:

Risk Manager

Date:

"CONSULTANT"

By: William L. Strausz

Date: October 24, 2003

APPROVED AS TO FORM:

City Attorney

Date: